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JOHNS HOPKINS UNIVERSITY STUDIES  
IN  
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

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History is Past Politics and Politics are Present History—*Freeman*

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THIRTEENTH SERIES

V

THE RISE AND DEVELOPMENT  
OF THE  
BICAMERAL SYSTEM IN AMERICA

By THOMAS FRANCIS MORAN, A. B.

*Fellow in History, J. H. U.*

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BALTIMORE  
THE JOHNS HOPKINS PRESS  
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**BICAMERAL SYSTEM IN AMERICA**



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# THE RISE AND DEVELOPMENT OF THE BICAMERAL SYSTEM IN AMERICA.

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## INTRODUCTION.

The purpose of this study is to trace the rise and development of the bicameral system from its beginnings in Massachusetts to its incorporation into the Federal Constitution. The acknowledged importance and universal application of this principle of government would seem to warrant a study of the various steps and, in so far as may be, of the causes which led to its introduction into the federal and all of the state constitutions. It is not necessary at this late day to exalt the importance of the bicameral principle. "The division of the legislature into two separate and independent branches," says Kent, "is founded on such obvious principles of good policy, and is so strongly recommended by the unequivocal language of experience, that it has obtained the general approbation of the people of this country."<sup>1</sup> It is, however, no part of the object of this paper to discuss the advantages or disadvantages of the system. Its philosophic aspects have attracted the attention of Kent,<sup>2</sup> Story,<sup>3</sup> Lieber<sup>4</sup> and a host of other political writers of eminence both in Europe and America. With this phase of the subject we have nothing to do. It is to the historical evolution of the system that we turn our attention.

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<sup>1</sup> Commentaries, I, Sec. 222.

<sup>2</sup> *Ibid.*, Secs. 222-224.

<sup>3</sup> Commentaries, II, 26-45.

<sup>4</sup> Civil Liberty and Self Government, Chap. XVII. See also John Adams' Defence of the American Constitutions.

## CHAPTER I.

### THE NEW ENGLAND COLONIES.

#### *Section I.—Massachusetts.*

In tracing the rise and development of the bicameral system in America, we naturally begin our study with Massachusetts, since it is here that we first find a colonial legislature consisting of two houses. In 1629 a charter was granted in England to the "Governor and Company of Mattachusetts Bay in Newe-England." In the following year the company and their charter were transferred to America. In accordance with this patent the whole body of freemen elected annually a governor, deputy-governor, and eighteen assistants<sup>1</sup> for "ordering of the generall buysines and Affaires." The legislative power, however, resided in the general assembly of freemen. The freemen met four times a year for the purpose of enacting laws. This plan soon seemed impracticable, and, in October, 1630, the power of electing governor and deputy-governor and of enacting laws was given to the assistants. The number of assistants actually performing the functions of their office was at times as low as five. Here, then, was an incipient oligarchy. The natural result followed. This vast power could not be placed in the hands of a privileged few with impunity. In performing their functions of office it became necessary for the assistants to levy a tax. In 1631 the people of Watertown refused to pay the tax thus levied on the ground that it was "taxation without representation." The pastor, elder, and a

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<sup>1</sup>Poore's *Charters and Constitutions*, I, 932.



few leading members of the Watertown church, when summoned before the Governor and assistants, declared that "it was not safe to pay moneys after that sort, for fear of bringing themselves and posterity into bondage."<sup>1</sup> They further say that they consider the government "no other but as of a mayor and aldermen, who have not power to make laws or raise taxations without the people." The assistants reply that the government is "rather in the nature of a parliament," and that the assistants, being chosen by the freemen, are their legal representatives, and so vested with power to levy taxes. The Watertown men concede the point, make a written apology for their obstinacy, and, according to the Journal of Governor Winthrop, go home apparently satisfied. Yet this protest, though apparently of no avail, was the origin of a very important constitutional change. The train of ideas thus set in motion led to the introduction of the representative system in 1632.<sup>2</sup> In May of that year each town chose two deputies to meet in the General Court with the Governor and assistants and to advise with them with regard to the raising of a "publique stocke."<sup>3</sup> We have here an analogue of the English Parliament. In this humble legislative Assembly the germs of the bicameral system are plainly discernible. The assistants were elected by the people at large while the deputies were chosen by the various towns. This difference in the modes of election naturally led both to think of themselves as constituting two separate bodies, though they deliberated and voted as one. What was to be their real status? Were they

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<sup>1</sup> Winthrop's *History of New England*, I, p. 84 (Savage's edition).

<sup>2</sup> Neither in the Massachusetts Records nor Gov. Winthrop's Journal is there any expressed connection between the Watertown case and the introduction of the representative system, yet the general drift of the matter indicates that such must have been the case. Doyle, in speaking of the introduction of the representative system says: "We can hardly err in supposing that this was the direct result of the protest made by the men of Watertown." *Puritan Colo.*, Vol. I, 106.

<sup>3</sup> Winthrop, I, 91; Massachusetts Records, I, 95.

to continue to deliberate and to vote as a single body, which they outwardly were, or as two separate bodies, which they were in reality? The charter made no provision for the body of deputies, hence their relation to the assistants was not defined. The question was therefore left for decision to the unwritten law of the constitution and was decided in accordance with English precedent with which the colonists were of course familiar. The test case was not long in presenting itself. It came in 1634. In September of that year the people of Newtown (now Cambridge) asked the permission of the General Court to remove to Connecticut. Their principal reason for moving was that they might have more land for pasturage. This request naturally met with some opposition. When the matter came to a vote the Governor, fifteen deputies, and two assistants voted to grant the request, while the Deputy-Governor, ten deputies, and "the rest of the assistants" voted to deny it.<sup>1</sup> The number of assistants voting upon the question was probably seven; hence a majority of the deputies voted in the affirmative, a majority of the assistants in the negative, and a majority (18 out of 34) of the entire Court, if taken as a single body, in the affirmative. The deputies claimed that the motion was carried, while the assistants held that it was lost. The protest of the assistants was entered "because there were not six assistants in the vote, as the patent" required.<sup>2</sup> A deadlock ensued and business was brought to a stand-still. In order to solve the perplexing

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<sup>1</sup> Winthrop, I, 168; Barry's *History of Massachusetts*, I, 273-4.

<sup>2</sup> Winthrop, I, 168. This provision was contained in the charter. (Poore, *Charters and Constitutions*, I, 937). The charter, however, was somewhat modified by later legislation of the General Court. Provision was made in the patent for eighteen assistants, but up to 1640 their number did not exceed twelve. Seven of the assistants were constituted a quorum by the charter; but in March, 1631, after some of them had returned to England, the General Court resolved that when there were fewer than nine assistants in the colony a majority of the number so present should constitute a quorum and that their acts should be as binding as if the full number of seven or more were present. *Massachusetts Records*, I, 84.

problem a day of fasting, humiliation, and prayer was observed; and, after a sermon upon the subject by the Rev. John Cotton, "the affairs of the court went on cheerfully."<sup>1</sup> The assistants carried their point and made good their claim, in this instance at least, to a negative upon the acts of the deputies. The victory was not a signal one, however. The turn which matters now took in the Newtown case no doubt diverted attention from the real point at issue and aided the assistants in sustaining their claim. Boston and Watertown ceded some of their land to Newtown<sup>2</sup> and the main cause, certainly the alleged one, for removal was taken away. Although the Newtown case was thus disposed of and a precedent established in favor of a negative on the part of the assistants, the relations between the two bodies were not definitely settled and a clashing of authority was inevitable. Finally in 1636 the General Court pronounced upon the matter in the following terms:

"And whereas it may fall out that in some of theis Genall Courts, to be holden by the magistrates & deputies, there may arise some difference of judgem<sup>t</sup> in doubtfull cases, it is therefore ordered, that noe lawe, order, or sentence shall passe as an act of the Court, without the consent of the great<sup>r</sup> p<sup>te</sup> of the magistrates on the one p<sup>te</sup>, & the great<sup>r</sup> number of the deputies on the other p<sup>te</sup>; . . ."<sup>3</sup>

This act rendered the two bodies coördinate in legislative authority and introduced one of the most essential features of the bicameral system. They continued to sit together, however, until 1644. The immediate cause of their separation was the famous case of Mrs. Sherman's pig, or, as dignified old Governor Hutchinson puts it, the "controversy between the two houses at this time was occasioned by a difference in sentiment upon the identity of a swine which was claimed by a poor woman as

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<sup>1</sup> Winthrop, I, 169.

<sup>2</sup> Massachusetts Records, I, 129; Winthrop, I, 169.

<sup>3</sup> Massachusetts Records, Vol. I, p. 170.

having strayed from her some years before, and, her title being disputed by a person of more consequence, divided not the court only, but the whole country."<sup>1</sup> The case was brought for final hearing to the General Court and the controversy was much more animated than the matter at issue would seem to deserve. Fifteen deputies and two assistants were favorable to Mrs. Sherman, while eight deputies and seven assistants espoused the cause of Captain Keayne. Seven assistants refrained from voting. As an outcome of the controversy the General Court resolved that the two bodies should sit apart, that bills might originate in either, and that a bill having passed one house should go to the other for "assent or dissent." Bills passed by both houses were to be "ingrossed" and "read deliberately" on the last day of the session before final assent was given. The reasons assigned by the General Court for the above resolution were that "divers inconveniences" resulted from the sitting together of the two bodies, and that they accounted it the part of "wisdom to follow the laudable practice of other states who have layd groundworks for government & order."<sup>2</sup> We have here a conscious and avowed reversion to English precedent. As Professor Fisher justly remarks, "the form of government was now assimilated to the English model."<sup>3</sup>

William C. Morey, in speaking of the bicameral system, says: "It would be difficult to imagine how any institution could be regarded as more indigenous to the soil or more completely shaped by the peculiar circumstances of time and place than was this system as it took its rise in Massachusetts."<sup>4</sup> The system was certainly "shaped by the peculiar circumstances of time and place," but can hardly be called "indigenous to the soil." The system in its growth and development,

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<sup>1</sup> Hutchinson's *History of Massachusetts*, I, 135. (Ed. of 1795.)

<sup>2</sup> Massachusetts Records, II, 58-9.

<sup>3</sup> Colonial Era, 113.

<sup>4</sup> Annals of the American Academy of Political and Social Science, Sept. 1893, p. 13.

as typified by the case of Massachusetts, was essentially American; but the bicameral principle did not originate on this side of the Atlantic, and the development of the institution in America was directly influenced, as we have seen, by the English model. The charter under which the colony was founded was not a complete scheme of government and it was repeatedly enlarged and modified by enactments of the General Court. Such modifications are scarcely ever made, and certainly were not in this case, with unanimity. When confronted with such constitutional questions the people of Massachusetts made such application of English precedent and English custom as seemed suited to the exigencies of the occasion. When the people of Watertown refused to pay the tax on the ground that they had no direct representation in the government, the matter was adjusted, after some delay, by introducing a system of town representation. Again, the bicameral system was resorted to as a solution of the difficulties attending the Newtown case and the case of *Sherman v. Keayne*. It seems entirely probable that these great principles of government would, sooner or later, have found their way into the American system regardless of English precedent; but it is also clear that the familiarity of the colonists with the practical working of these institutions in England hastened their introduction into American legislatures. It must be borne in mind that these men were Englishmen and imbued with English political ideas; and, although many of them had left England to escape persecution, they still believed the English government to be the best in the world, and hated, not the government itself, but its administration in the hands of the Stuarts.

#### *Section II.—New Hampshire.*

Although the colony of New Hampshire was founded at a comparatively early period, it was not until 1679 that she set out upon an independent governmental career. Up to this date the New Hampshire settlements consisting of the four

towns of Portsmouth, Hampton, Dover, and Exeter, were under the jurisdiction of Massachusetts. On September 18, 1679, however, a royal commission<sup>1</sup> was issued by Charles II constituting New Hampshire a separate province and naming for her a president and council. John Cutts<sup>2</sup> was named in this document as president,<sup>3</sup> and a council of six was designated—three from Portsmouth, and one from each of the remaining towns. The President and Council were authorized to appoint three additional councillors,<sup>4</sup> and were instructed to summon a general assembly. All laws passed by this assembly were to be submitted to the President and Council for approval and then sent to England for final approval or rejection.<sup>5</sup> The President was empowered to recommend to the Assembly the passage of any laws which he thought conducive to the general welfare of the colony. The first General Assembly under this frame of government convened on March 16, 1680, at Portsmouth.<sup>6</sup> At this meeting, as at all subsequent ones, joint sessions excepted, the two branches, following the evident intention of the commission, sat apart.<sup>7</sup> The temper of the people regarding their legislative prerogatives is plainly discernible in an act passed at this session by the Assembly and approved by the President and Council. It was enacted that "no Act, Imposition, Law or Ordinance be made or imposed upon" the people "but such as shall be made by the said Assembly and approved by the Presid<sup>t</sup> and Councill."<sup>8</sup> It is clear that the representative Assembly was determined to assert itself as a very important factor in legislation. Provision was made for meetings of the General Assembly to

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<sup>1</sup> New Hampshire Provincial Papers, I, 373; Poore, *Charters and Constitutions*, II, 1275.

<sup>2</sup> He is called Cutt in the Commission.

<sup>3</sup> Prov. Papers, I, 374.

<sup>4</sup> *Ibid.*, 375.

<sup>5</sup> *Ibid.*, 379-80.

<sup>6</sup> *Ibid.*, 382.

<sup>7</sup> See Belknap's *History of New Hampshire*, I, 178-9; also Farmer's Belknap's *Hist. of N. H.*, 453.

<sup>8</sup> Prov. Papers, I, 382-3; Farmer's Belknap, 453-4.

be held annually at Portsmouth, on the first Tuesday in March.<sup>1</sup>

President Cutts died in 1682, and, after a short interval, was succeeded by Edward Cranfield. His commission<sup>2</sup> of May 9, 1682, authorized him "to make, constitute, and ordain laws, statutes and ordinances" "by and with the advice and consent of" the Council and Assembly, "or the major part of them respectively." A council of ten members was named in the commission and the Governor was given a negative on all laws. It is evident from the language above quoted from the commission that the intention was to continue the bicameral system in the legislature. This was done.<sup>3</sup> The Assembly, however, was almost a nonentity during the iniquitous administration of Cranfield. Owing to a disagreement it was dissolved by the Governor in 1683, and the legislative power was assumed by the Governor and Council.<sup>4</sup> Being in want of money the Governor summoned another Assembly, which met on January 14, 1684. He submitted to them a money bill which was drawn up and previously passed by the Council. This method of originating money bills was deemed "unparliamentary" by the popular representatives, and the bill was promptly rejected. The Assembly was just as promptly dissolved, January 15.<sup>5</sup> Another Assembly called in July of the same year was almost immediately dissolved, and was the last one in Cranfield's administration.<sup>6</sup>

Under the rule of Andros laws were enacted by the Governor and Council without the aid of a popular assembly. On April 18, 1689, after the news of the deposition of King James and the coronation of William and Mary reached New Hampshire, Andros was called upon to surrender the govern-

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<sup>1</sup> Prov. Papers, I, 395.

<sup>2</sup> *Ibid.*, 433.

<sup>3</sup> See Belknap, I, 193. "No *Journal of the House* separate from the joint *Journal of the Council and Assembly* is found till 1711." Bouton in preface to *Prov. Papers*, Vol. III, pt. II.

<sup>4</sup> Belknap, I, 201.

<sup>5</sup> *Ibid.*, 203-4.

<sup>6</sup> *Ibid.*, 214.

ment.<sup>1</sup> From this time until 1692 affairs were in a decidedly unsettled condition.<sup>2</sup> Finally, on March 1, 1692, a commission<sup>3</sup> was issued to Samuel Allen designating him as Governor. This commission and the instructions<sup>4</sup> issued on March 7 of the same year constituted a frame of government the legislative department of which differed in no way from that provided for in the commission and instructions of Governor Cranfield. The names of a council of ten members appear in the instructions. It was the evident intention that the two houses should sit apart and constitute two coördinate branches of the legislature. That they did so in actual practice is evident from an inspection of the records.<sup>5</sup>

The constitution of January 5, 1776, provided for a legislature consisting of a House of Representatives and a Council. The two branches were to be distinct and coördinate.<sup>6</sup>

### *Section III.—Connecticut.*

In Connecticut the development of the bicameral system took place not as a consequence of the jealousy existing between the parts of the legislative body, as was the case in Massachusetts, but was due to a large extent to the harmonious relations existing between the assistants and deputies.

According to the *Fundamental Orders*<sup>7</sup> of January 14, 1639, the legislative body, called the General Assembly or General Court, was to consist of the Governor, magistrates, and four deputies from each of the confederating towns.<sup>8</sup> The magistrates were elected by the whole body of freemen and the deputies by the people of the respective towns. The magis-

<sup>1</sup> Prov. Papers, II, pt. I, 21.

<sup>2</sup> *Ibid.*, II, pt. I, 30.

<sup>3</sup> *Ibid.*, II, pt. I, 57.

<sup>4</sup> *Ibid.*, II, pt. I, 63.

<sup>5</sup> See Minutes of the Council in Prov. Papers, II, pt. I, 109 ff.; also Journal of Council and Assembly in Prov. Papers, III, pt. II, 5 ff.

<sup>6</sup> Charters and Constitutions, II, 1279-80.

<sup>7</sup> *Ibid.*, I, 249.

<sup>8</sup> Windsor, Hartford and Wethersfield.



trates and deputies composed one house and were presided over by the Governor, who, in case of a tie, cast the deciding vote. The deputies were, however, authorized to meet by themselves at some time previous to the meeting of the General Assembly "to advise and consult of all such things as may concerne the good of the publike."<sup>1</sup> This fact together with the different modes of election seems to foreshadow the further differentiation of functions and the eventual separation of the two bodies.

The *Fundamental Orders* were succeeded by the charter of 1662.<sup>2</sup> It was this charter which the younger Winthrop was sent to secure and in the negotiation of which he was so eminently successful. The King evidently gave him all he asked for, and, as a consequence, this charter left little to be desired. In the language of Professor Johnston, it "raised the Connecticut leaders to the seventh heaven of satisfaction."<sup>3</sup> It was practically a confirmation of the *Fundamental Orders* with two changes of importance, both of which were desired by the colonists. The number of deputies was changed to two and the Colony of New Haven was included. The latter provision was as agreeable to Connecticut as it was odious to New Haven. The charter provided for a legislative body,—a governor or deputy-governor, twelve assistants, and a number of deputies not exceeding two from each "Place, Town, or City." The Governor, Deputy-Governor, and assistants were to be chosen by the whole body of freemen in primary assembly, while the deputies were to be elected by the people of their respective localities. All constituted one house, and that they dwelt together in peace and harmony—a condition of things quite unusual in colonial legislatures—is evidenced by a resolution of the General Court of 1678. In May of that year the Governor, Deputy-Governor, and assistants were constituted a "standing councill to issue all such occasions and matters as"

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<sup>1</sup> Charters and Constitutions, I, 251.

<sup>2</sup> *Ibid.*, 252-7.

<sup>3</sup> Genesis of a New England State, Johns Hopkins University Studies, Vol. I, No. 11, p. 26.

should "fall in in the intervalls of the Generall Court."<sup>1</sup> As the regular meetings of the Court took place in May and October, such a standing committee seemed a necessity. This resolution is an important step in the separation of the two bodies. It was, as Professor Johnston has remarked, "the prelude to the inevitable introduction of a bi-cameral system."<sup>2</sup> The confidence thus reposed in the assistants seems not to have been abused, for the authority conferred upon them in 1678 was regularly continued at the May and October meetings of the Court until 1686. At this time there arose a complication of affairs which placed matters of the gravest importance in the hands of the Governor and Council. Under date of May 27, 1686, Edward Randolph, a royal commissioner and forerunner of Edmund Andros, wrote to Governor Treat and Council asking them to surrender their charter. He said that a writ of *quo warranto* had been issued against Connecticut, and that he had been intrusted with the serving of it. He would greatly prefer, however, he said, to have the people of Connecticut gain royal favor by a voluntary surrender of their charter before the service of the writ. He proclaimed the intention of the King as being "to bring all New England under one Governem<sup>t</sup>," and boldly asserted that nothing remained for the people of Connecticut but "an humble submission and dutifull resignation" of their charter. He counselled haste in the matter. "S<sup>r</sup>," said he, "bless not yourselues w<sup>th</sup> vaine expectation of advantage & spinninge out of time by my delay: I will engage tho' the weather be warme the writs will keep sound and as good as when first landed."<sup>3</sup>

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<sup>1</sup> Colonial Records of Conn., 1678-1689, p. 15.

<sup>2</sup> Connecticut, 269.

<sup>3</sup> Letter of Edward Randolph to Gov. Treat and Council, in Colonial Records of Conn., 1678-1689, pp. 352-4.

The writs would certainly be as sound and as good as when first landed, for they were even then perfectly worthless. Randolph's voyage was an unusually long one—about six months in duration—and the time for the return of the writs had expired before he reached America.

Governor Treat and his Councillors, however, were decidedly of the opinion that something did remain aside from "humble submission" and "dutifull resignation." A meeting of the Council was accordingly called, and on June 11, 1686, an answer was drafted and sent to Mr. Randolph. In this emergency the Governor called a special session of the General Court for July 6, 1686. He reported the action taken by himself and Council upon the receipt of Mr. Randolph's letter, and that action was approved.<sup>1</sup>

This Randolph episode was a very important incident in the development of the bicameral system. Heretofore, the business transacted by the Council in the recesses of the General Court was largely of a routine character, and report upon it was not deemed essential; but in this case, when the very liberties of the colony were at stake, Governor Treat and Council deemed it wise and expedient to lay the whole matter before the General Court in special session and ask their endorsement. This was the beginning of a system of report and approval whereby all important matters passed upon by the Governor and Council were reviewed by the entire Court. This custom was, too, an important step toward the separate voting and separate deliberation of the two bodies.

After approving the action of the Council the General Court appointed that body a committee to prepare an address upon the matter to the King.<sup>2</sup>

Mr. Randolph, finding but cold comfort in the resolute replies of the Council, served the writ on July 20-21, at midnight. Another extra session of the Court was deemed necessary and was called for July 28, 1686. At this meeting the Governor and Council were instructed to appoint an agent to represent the colony in England.<sup>3</sup> Mr. William Whiting, a London merchant, was accordingly commissioned to act in this capacity. At the next meeting of the Court this action

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<sup>1</sup> Colonial Records of Connecticut, 1678-1689, p. 208.

<sup>2</sup> *Ibid.*, p. 208.

<sup>3</sup> *Ibid.*, 213.

was reported to that body and approved by it.<sup>1</sup> The weighty matters with which the Council was now dealing and the general colonial aversion toward anything savoring of unrestricted authority combined to render this method of report and approval a popular one.

Andros landed December 20, 1686, and demanded the surrender of the charter. A special session of the Court convened on January 26, 1687, and the Council was again empowered to take such action as seemed wise and expedient.<sup>2</sup> The outcome of the matter is well known. Andros governed as viceroy from 1687 to his expulsion, in April of 1689. In the interim charter government was, of course, suspended.

Immediately after the resumption of charter government in 1689, steps were taken toward making it obligatory upon the Council to submit certain of their acts to the General Court for approval. In May of 1689, the deputies expressed their desire by vote that all matters concerning the "charter or government" should be decided by the General Court, in special session if need be, and not left to the independent action of the Council.<sup>3</sup> This advice was soon acted upon by the Court. The custom which obtained before the viceroyalty of Andros of constituting the Governor and Council a standing committee for the transaction of business in the recesses of the General Court was continued, but was modified in one essential particular: it was now definitely and repeatedly stated that there were certain matters with which the Council was not to deal. Naturally enough the matters thus sacredly guarded had to do with their charter liberties and the levying of taxes. In October of 1691, the General Court, after conferring the usual authority upon the Council, added the proviso that they (the Council) "rayse no money nor make no alteration of or charter government."<sup>4</sup> In October of 1692, it is likewise

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<sup>1</sup> Colonial Records of Connecticut, 1678-1689, pp. 217-218.

<sup>2</sup> *Ibid.*, p. 226.

<sup>3</sup> *Ibid.*, 252-3.

<sup>4</sup> *Ibid.*, 1689-1706, p. 62.

"provided [that] they doe not intermeddle with the altering or parting with any of our charter rights and priviledges without the consent and appoyntment of our Generall Court."<sup>1</sup> Again in October, 1697, the same restriction is placed upon the acts of the Council.<sup>2</sup> This custom marks another step in the evolution of the bicameral system.

It is noticeable that during the period between 1689 and 1698 the acts of the Council, even those not relating to taxes and the charter, were submitted with greater frequency and regularity to the General Court for approval.<sup>3</sup> In 1698, however, instead of approving isolated acts of the Council a general approval was expressed in the following terms: "This Court declared their approbation of what hath been acted by the Council since Octob<sup>r</sup> last."<sup>4</sup> This substitution of general for specific approval marks another step in the process of the separation of the two bodies. The Council in the meantime still continued to serve the colony in various capacities. In April of 1690 that body was appointed a "Councill of War," and two years later was commissioned to try several persons "indicted for familiarity with Satan."<sup>5</sup> Duties of far more importance from a legislative standpoint, and of peculiar interest in our present study, devolved upon the Council in 1698. In May of that year they were instructed to make an inquiry as to the extent to which the laws of England were in force in America and to report the result to the General Court. They were also instructed to *prepare and report bills* for the regulation of courts of justice, to suggest proper methods of raising revenue, and to devise a plan for the suppression of vice.<sup>6</sup> This process of legislation approximates very closely the essential features of the bicameral system, and little was wanting to make the evolution of that system complete. The

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<sup>1</sup> Colonial Records of Connecticut, 1689-1706, pp. 84-5.

<sup>2</sup> *Ibid.*, 226.

<sup>3</sup> See *Ibid.*, pp. 47, 149, 202, 205.

<sup>4</sup> *Ibid.*, 251.

<sup>5</sup> See *Ibid.*, pp. 76, 102, 205.

<sup>6</sup> *Ibid.*, 261-2.

final step in the process was taken in October of 1698, and is thus recorded : " It is ordered by this Court and the authority thereof, that for the future this Gener<sup>l</sup> Assembly shall consist of two houses ; the first shall consist of the Govern<sup>r</sup> or, in his absence, of the Deputy Govern<sup>r</sup>, and Assistants, which shall be known by the name of the Upper House ; the other shall consist of such Deputies as shall be legally returned from the severall towns within this Colonie, to serve as members of this Generall Assembly, which shall be known by the name of the Lower House, wherein a Speaker chosen by themselves shall preside : which houses so formed shall have a distinct power to appoint all needfull officers, and to make such rules as they shall severally judge necessary for the regulating of themselves. And it is further ordered that no act shall be passed into a law of this Colonie, nor any law already enacted be repealed, nor any other act proper to this Generall Assembly but by the consent of both houses."<sup>1</sup>

#### *Section IV.—Rhode Island.*

Although agitation for the separation of the two branches was begun at a very early period on the part of the deputies, more than a half century elapsed between the granting of the first charter and the introduction of the bicameral system. This long delay was, in large part, due to the peculiar method of its introduction, and particularly to a compromise upon the matter between the magistrates and deputies in May, 1668.

The English Parliamentary Commission granted a charter or patent to the Providence Plantations on March 14, 1644. The first General Assembly was held at Portsmouth, May 19–21, 1647. At this Assembly the charter, an exceedingly liberal one, was adopted, and the government systematically organized. A majority of the freemen of the colony were

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<sup>1</sup> Colonial Records of Connecticut, 1689–1706, p. 267.

present and declared forty a quorum to do business.<sup>1</sup> Thus early do we find the germ of the representative system in the government of the new colony.<sup>2</sup>

The charter of 1663 vested the government of the colony in a governor, deputy-governor, ten assistants, and eighteen deputies.<sup>3</sup> As in Connecticut, the Governor, Deputy-Governor, and assistants were chosen annually by the entire body of the freemen, while the deputies were elected by the people of the respective towns.<sup>4</sup> Here as in Connecticut the different modes

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<sup>1</sup> Colonial Records of Rhode Island, I, 147.

<sup>2</sup> See Arnold's *History of Rhode Island*, I, 201-2.

The method devised by this Assembly for the passing of laws was a curious mixture of the representative system and the referendum. Any town of the colony—Providence, Portsmouth, Newport or Warwick—could initiate legislation. When a town desired the passage of a certain law, the matter was discussed and voted upon in the town-meeting. In case of an affirmative vote, a copy of the bill was sent to each of the other towns to be debated and determined in like manner. A report of the action taken by the various towns was then referred to a "Committee for the General Courte" consisting of six members from each town. This committee, acting as a central canvassing board, determined whether or not the proposed measure had been sanctioned by the "Major parte of the Colonie." If so, the matter was declared a law to stand until the next meeting of the General Assembly. The final disposition of the matter was then made. It was, in short, the duty of the committee to promulgate laws, not to pass them. The initiative in legislation was, however, given to them to be exercised in this way. They were authorized to discuss and determine among themselves any matter presented to them that might "be deemed necessary for the public weale and good of the whole." The various members then reported the action of the committee to their respective towns, by whom it was discussed and voted upon. The votes were sealed and forwarded to the General Recorder of the colony to be opened and counted in the presence of the President. In case it was found that the proposition had received a majority vote, it was declared a law to stand until the next meeting of the General Assembly, by which it was either confirmed or rejected. Colonial Records of Rhode Island, I, 148-9. See also Arnold's *History of Rhode Island*, I, 203.

<sup>3</sup> Newport was allowed six deputies, and the remaining towns four each. It was also provided that any town subsequently added should have two deputies.

<sup>4</sup> Charters and Constitutions, II, 1597-1599. Colonial Records of Rhode Island, II, 7-11.

of election constitute the germ of the bicameral system ; and, though all sat in the same house, the time was not far distant when separation was to be sought. It is evident from the records that steps looking toward this end were taken almost immediately. It was recorded in October of 1664, that there had "been a long agestation about the motion whether the magistrates [assistants]" should "sitt by themselves and the deputies by themselves."<sup>1</sup> The matter was put over to the next meeting of the Assembly. It appears that this "long agestation" was caused by petitions from Warwick and Portsmouth asking for the separation of the two bodies. No further action seems to have been taken until March of 1666. The petitions of the two towns were now duly discussed, and after "haveing well weighed such conveniencies" and "inconveniencies" as might result from the separation, the Assembly decided to grant the request, and accordingly ordered that the deputies and assistants should sit apart. The settling of the details of the change was put over to the meeting of the following May.<sup>2</sup> At that time, however, no action was taken owing to the small attendance of the deputies. In September the Assembly seemed undecided as to the advisability of the change and ordered the temporary suspension of the enactment by which the separation of the two bodies was to have been effected. All members of the Assembly thus continued to constitute one house.<sup>3</sup> In October of the same year (1666), a definite decision was reached. At this time the Assembly, "having had long and serious debates about the premises," ordered that the two bodies should constitute one house as heretofore until further action be taken.<sup>4</sup>

It is not at all strange that at this time the debate upon the merits of the bicameral system should have been "long and serious," inasmuch as it had not fully demonstrated its applicability to American conditions, and certainly was not

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<sup>1</sup> Colonial Records of Rhode Island, II, 63.

<sup>2</sup> *Ibid.*, 144-5.

<sup>3</sup> *Ibid.*, 150-1.

<sup>4</sup> *Ibid.*, 181.



then what De Tocqueville afterwards termed it—"an axiom in the political science of the present age."<sup>1</sup>

In May, 1667, the Governor and Council began a series of frequent meetings<sup>2</sup> to dispose of important matters arising in the intervals of the General Court. The hostility of the French and Dutch together with the surly mutterings of Indian enmity which culminated in King Philip's War rendered this a critical period in the existence of the new colony. These separate meetings served to differentiate further the functions of the two bodies.

The agitation for the final separation of the two bodies seems to have gone steadily on; and in May, 1668, it resulted in a compromise which was destined to delay the introduction of the bicameral system in its complete form for nearly three decades. At this time the deputies requested that they be allowed to withdraw from the Assembly "to consider of such affaires as they may think fitt to propose for the well beinge of the Collony." This request was granted, but with the proviso that they return to the Assembly in half an hour. It was further enacted that the same permission be accorded the deputies in the future in case a majority of them should desire it. No law was to be passed in their absence.<sup>3</sup>

In 1672 a method which still quite meets the approval of politicians was resorted to in order to allay the jealousy arising between the two bodies. The Treasurer was instructed to provide, at public expense, a dinner "ffor the keepinge of the Magistrates and Deputies in love together, for the ripeninge of their consultations, and husbandinge of their time."<sup>4</sup>

Although as a result of various compromises and devices the deputies continued to sit in the same chamber with the magistrates, it is clear that certainly as early as 1672 they looked upon themselves as a separate and distinct body. They considered themselves the House of Commons for Rhode

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<sup>1</sup> *Democracy in America*, I, 87 (Reeve's translation).

<sup>2</sup> *Records*, II, 191.

<sup>3</sup> *Ibid.*, II, 223.

<sup>4</sup> *Ibid.*, 445.

Island, and were not slow in claiming some of the most important prerogatives of the English body. On Nov. 6, 1672, it was enacted "that noe tax nor rate from henceforth shall be made, layd or levied on the inhabitants of this Collony without the consent of the Deputys present pertaining to the whole Collony." In the preamble the reason for this legislation is set forth. It is declared that "the House of Commons is the peoples representatives there, and the Deputys the representatives of the freemen here;" and as no tax can be levied in England without the consent of the House of Commons, so, too, is it equally just that tax legislation for the colony should meet the approval of the deputies.<sup>1</sup> The power of the deputies was further increased by another act of the same date providing that no law concerning the "King's honor" or "the peoples antient right and libertys" should be passed without the presence of "the major part of the Deputys belonging to the whole Collony." It was added that any act of the nature indicated, passed contrary to the above provision should be "voyd and of none effect."<sup>2</sup>

The deputies had now attained some of the most important attributes of the bicameral system, but it is plain from the course of events that they were to be satisfied with nothing less than complete separation. On May 6, 1696, they express their desire by way of formal resolution "that it may be made an act of this Assembly, and pass as a vote of the house, that all the Deputies of each respective town, shall sit as a House of Deputies, for the future, and have liberty to choose their Speaker among themselves, and likewise the Clerk of the Deputies; and that the majority of the Deputies so assembled, shall be accounted a lawfull House of Deputies."<sup>3</sup> This was agreed to, and the Governor and Council were constituted the upper house of the Assembly.

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<sup>1</sup> Records, II, 472-3.

<sup>2</sup> *Ibid.*, 473.

<sup>3</sup> *Ibid.*, III, 313.

## CHAPTER II.

### THE MIDDLE COLONIES.

#### *Section I.—New Jersey.*

The first legislative Assembly that ever convened in New Jersey was bicameral; and, though this was in apparent contradiction to the terms of the charter, and notwithstanding the fact that strenuous efforts were made to revert to a single-chambered legislature, the system was never abolished. The colony was organized under the *Concessions*<sup>1</sup> of February 10, 1665. By this instrument the government of the colony was vested in a legislative body composed of a governor, a body of councillors, not less than six nor more than twelve in number, and twelve representatives or deputies chosen by the "freemen or cheife Agents to others of the Province." The Governor was to be appointed by the Proprietors and the Council by the Governor. Thus councillors and deputies came to be regarded at once, and rightly so, as the conservators of the interests of the Lords Proprietors and the people respectively. To this fundamental difference were largely due the early introduction of the bicameral system and much of that discord which characterized the legislative proceedings of New Jersey throughout the entire colonial period.

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<sup>1</sup>"THE CONCESSIONS and Agreement of the Lords Propriators of the Province of New Cesarea or New Jersey to and with all and every the Adventurers and all such as shall settle or plant there." New Jersey Archives, I, 28-42. Leaming and Spicer's "Grants and Concessions," etc., 12-26.

It is reasonably, though not absolutely, clear from the language of the *Concessions* that the Proprietors intended that the Governor, councillors, and representatives should constitute a General Assembly of one house. This seems plain from the fact that the Governor or Deputy-Governor is designated as the presiding officer of the legislative body constituted as above indicated. The phraseology is, however, indefinite and at times ambiguous; and it was obviously to the advantage of the councillors to avail themselves of this ambiguity and to insist on sitting apart from the deputies, since the increasing growth of the colony would soon cause the deputies far to outnumber the councillors.

It was not until April 7, 1668, that the Governor issued a call for an assembly. The burgesses were directed to choose "able men that are freeholders" to join with the Governor and Council "in the Management of affaires."<sup>1</sup> In obedience to this call the first legislative Assembly of the colony was convened on May 26, 1668. The councillors immediately insisted on sitting by themselves, and contended that such an arrangement was in harmony with the evident intention of the *Concessions*. The fact, however, that there were ten deputies present and only seven<sup>2</sup> councillors had, no doubt, considerable weight in bringing them to this conclusion. It must have been plain that in any instance when the interests of the Proprietors were opposed to those of the people—and such instances were certain to arise—the councillors would be outvoted by the deputies. It seems plain, too, that the Council was impelled in the matter more by an instinct of self-preservation than by any conscientious scruples regarding the interpretation of the *Concessions*. To become a legislative nonentity was not a pleasing prospect. At any rate, they carried their point and the two branches of the Assembly deliberated apart.<sup>3</sup> This meeting lasting but four days seems to have been harmonious.

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<sup>1</sup> New Jersey Archives, I, 56-7.

<sup>2</sup> Leaming and Spicer, 77.

<sup>3</sup> *Ibid.*, 84.

It was brought to a close at the request of the deputies. They sent a communication to the Council saying that they had perused certain bills submitted to them by that body but asked that final action be deferred until next meeting. To this the Council assented. At the next meeting held on Nov. 3, 1668, it became evident that the differences between the two branches of the Assembly were, for the time at least, irreconcilable. The deputies were not to be easily reconciled to the bicameral arrangement, and the councillors seemed intent on thwarting the popular advantage to be gained from an assembly of one house. Early in the session, Nov. 6, 1668, the deputies express themselves to the Council thus: "We finding so many and great Inconveniences by our not setting together, and your apprehensions so different to ours, and your Expectations that Things must go according to your Opinions, though we see no Reason for, much less Warrant from the Concessions, wherefore we think it vain to spend much Time of returning Answers by writings that are so exceeding dilatory, if not fruitless and endless, and therefore we think our way rather to break up our meeting, seeing the Order of the Concessions cannot be attended unto."<sup>1</sup> In reply to the above the Council request the deputies to appoint two of their number to confer with them regarding the alleged infringements of the *Concessions*. "If reason will satisfy you," the reply continues, "we shall be very well pleased that you proceed according to the Lords Proprietors Concessions and the Trust imposed upon you, if not you may do what you Please, only we advise you to consider well of your Resolutions before you break up."<sup>2</sup> Such correspondence as this, however, was hardly conducive to arbitration; consequently on the following day, November 7, the Assembly adjourned not to meet again for seven years. As might be expected the colony drifted rapidly toward anarchy. A rival government was set up under the leadership of James Carteret, and deputies elected by the popular party met at

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<sup>1</sup> Leaming and Spicer, 90.<sup>2</sup> *Ibid.*, 90-91.

Elizabethtown on May 14, 1672,<sup>1</sup> and proceeded to act as the lawful Assembly of New Jersey. In this critical juncture prompt action was indispensable for the preservation of the authority of the Proprietors. Philip Carteret the Governor and James Bollen, Secretary of the Council, proceeded at once to England and laid the whole matter before the Lords Proprietors. Inasmuch as the *Concessions* of 1665 had been the object of such bitter contention, and since that instrument had been so differently interpreted by the Governor and Council on the one hand and the deputies on the other, it seemed incumbent upon the Lords Proprietors to declare the "true intent" of the disputed clauses. This they did in an instrument bearing the date December 6, 1672, and styled, "A DECLARATION of the true intent and Meaning of us the LORDS PROPRIETORS, and Explanation of there Concessions made to the Adventurers and Planters of New-Caesarea or New Jersey."<sup>2</sup> It is clear from a perusal of this document that its title is a misnomer. It is not a "declaration of the true intent and Meaning . . . and Explanation of the Concessions" but a very essential modification of that fundamental instrument. The effect of this *Explanation* was to enhance very materially the power of the Council at the expense of the General Assembly as a whole. The Proprietors, naturally enough perhaps, favored the Council in their exposition of the mooted clauses. It is evident, too, that they were induced more by expediency than by considerations of abstract justice or by a logical construction of the terms of the *Concessions*. The "explanation" of most importance for our present purpose is the declaration regarding the deliberations of the General Assembly. "WE the LORDS PROPRIETORS," they affirm, "do understand that in all Generall Assembly's, the Governor and his Council are to set by themselves, and the Deputies or Representatives by themselves, and whatever they do propose to be presented to the Governor and his Council, and upon

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<sup>1</sup> New Jersey Archives, I, 89-90.

<sup>2</sup> *Ibid.*, I, 99.

their Confirmation to pass for an Act or Law when Confirm'd by us."<sup>1</sup> Whatever may have been the intent of the *Concessions* of 1665, the above is clearly a declaration for the bicameral system.

On Nov. 5, 1675, a meeting of the General Assembly was held after an interval of seven years. Although the sessions were now regular it was evident that the new dispensation was not at all satisfactory to the deputies. The attitude and temper of the two houses are clearly disclosed in the correspondence<sup>2</sup> which took place between them at a meeting from Oct. 19 to Nov. 2, 1681. The deputies objected to the *Explanation* of Dec. 6, 1672, on the ground that it curtailed their power to the advantage of the Council, and further contended that the *Concessions* of 1665 should "be taken according to the Letter w<sup>th</sup>out any Interpretacon whatsoever." They characterize the *Explanation* as "a Breach of the Concessions" and "desire and Expect that the same may be made voyd and of none effect." They state in their communication to the Council that their action is not hasty or ill-advised, but that on the contrary they have "perused and well weighed" the contents of the document under consideration. To this the Council submitted the somewhat tart rejoinder that if they "had alsoe the Benefitt of understanding," they "would neither have desired nor Expected the same to be made voyd." They declare it "a matter of lamentac'on that the Representatiues of this Province should be soe shorte sighted that they cannot see that he which runnes may Read." A joint meeting is

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<sup>1</sup> New Jersey Archives, I, 100-101. The *Explanation* also granted to the Governor and Council the power "to appoint the Times and Places of meeting of the General Assembly, and to adjourn and summon them together again:" a power formerly vested in the General Assembly as a whole. New Jersey Archives, I, 99.

On July 31, 1674, Sir George Carteret in a body of "Instructions" to the Governor reiterates the *Explanations* of 1672, thus proclaiming again the bicameral system. New Jersey Archives, I, 167-175. Leaming and Spicer, 55-67.

<sup>2</sup> New Jersey Archives, I, 354-365.

proposed for discussing the points at issue. Failing in this, recourse is again had to pot and kettle correspondence. The crisis came on Nov. 2, 1681. On that day the Clerk of the Council appeared in the House of Deputies at the head of a committee and requested that body to accompany him to the council chamber, there to discuss, and, if possible, settle their points of difference. The Speaker replied that the deputies wished "to consider of it a little." Thereupon the Clerk of the Council declared the "Pretended house of Deputies" dissolved, and left upon the table a letter in which the Council had "freed their minds." The letter charges the deputies with considering themselves the entire Assembly; and adds that if they were at all qualified to act as representatives they would have good manners enough to prevent them from assuming so much. "It was Lucifers Pride," say the councillors, "that Putt him upon settling himselfe where God never intended to sett him and his Presumption produced or was the forerunner of his fall." The deputies are accused of arrogating to themselves powers never given to them by the *Concessions* or the laws of England. In addition they are twitted with being more zealous for private and selfish ends than for the welfare of the colony. "Private Spiritts in men in publique employ<sup>mt</sup> are the Jewels that addorne yo<sup>r</sup> bresta." "Everything being beautifull in its season and soe we bid you fairewell" is the parting shot from the Council's well supplied magazine of invective. Thus ended in failure the strenuous endeavor of the deputies to revert to the *Concessions* of 1665 and a single-chambered legislature.

In 1683 the Proprietors issued "*The Fundamental Constitutions*"<sup>1</sup> for the government of the province, but attached certain conditions with which the people were to comply before availing themselves of the privileges of the new instrument. Although this new frame of government was not put into operation,<sup>2</sup> it is interesting to note the changes in the constitu-

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<sup>1</sup> New Jersey Archives, I, 395.    <sup>2</sup> See Mulford's *History of New Jersey*, 219.



tion of the legislature. The law-making power was vested in a "Grand Council" to be composed of the Proprietors or their proxies and the representatives. They were to constitute one house, but in voting a distinction was made between the Proprietors and the representatives. One-half of the Proprietors and one-half of the representatives were to constitute a quorum; and the votes of two-thirds of the representatives and one-half of the Proprietors present at any meeting were necessary for the passage of a bill. This constitution, then, if put into operation,<sup>1</sup> would establish a peculiar kind of unicameral legislature in which the system of checks and balances so potent in bicameral legislatures would operate.

The legislative Assemblies thus far noticed are those of New Jersey up to July 1, 1676; after that date they belong to the history of *East Jersey*. On the date just mentioned the province was divided<sup>2</sup> into East and West Jersey by the *Quintipartite* deed. Although of secondary importance for our present purpose, a brief consideration of the West Jersey legislature is essential. The fundamental law was comprised in "*The Concessions and Agreements*"<sup>3</sup> of March 3, 1677. The legislature consisted of one house. The whole province was to be divided into one hundred "proprieties" and the inhabitants of each were to choose one representative. These "Deputies, Trustees or Representatives" were to constitute the "General, Free and Supream Assembly." The Assembly met for the first time on November 25, 1681, and for a time continued to meet regularly. Finally on April 15, 1702, the

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<sup>1</sup> The reasons why this constitution—which appears in many ways an improvement upon the old form—was not adopted, do not appear in the records. The Deputy-Governor did not press its adoption, as he was instructed to do, and there were certain features of it not entirely agreeable to the colonists. See Mulford, p. 221.

<sup>2</sup> New Jersey Archives, I, 205.

<sup>3</sup> "The Concessions and Agreements of the Proprietors, Freeholders, and Inhabitants of the Province of West New-Jersey in America." New Jersey Archives, I, 241-270. Leaming and Spicer, 382.

two colonies of East and West Jersey were surrendered<sup>1</sup> to the Crown, united, and made a royal province. Lord Cornbury was appointed to govern both New York and New Jersey, and his commission<sup>2</sup> and "*Instructions*"<sup>3</sup> constituted the fundamental law of New Jersey throughout the remainder of the colonial period.<sup>4</sup> The legislature was composed of thirteen councillors named in the "*Instructions*," and twenty-four representatives chosen by the people—twelve from East and twelve from West Jersey. The sessions were to be held alternately at Perth Amboy and Burlington—in East and West Jersey respectively. The Council and House of Representatives, following the custom of East Jersey, sat apart.<sup>5</sup>

Another change of some importance was made in the legislature in 1738. In that year New Jersey was separated from New York, and the Governor of New Jersey withdrew from the deliberations of the Council.<sup>6</sup>

<sup>1</sup> Leaming and Spicer, 615; Archives, II, 452.

<sup>2</sup> Archives, II, 489.

<sup>3</sup> *Ibid.*, 506.

<sup>4</sup> Cf. Gordon's *History of New Jersey*, 54-5.

<sup>5</sup> Journal and Votes of the House of Representatives of New Jersey, p. 21.

<sup>6</sup> Mulford, p. 335. Frothingham (*Rise of the Republic*, p. 20, n.) says that the House and Council sat together. It is plain from the records that they did not. For instance, in the records of the first meeting of the House of Representatives, held in 1703, we find the following entry: "A message from y<sup>e</sup> Council by Maj<sup>r</sup> Sanford, That they have agreed to a Bill Entituled a Bill for Regulating y<sup>e</sup> purchasing of Lands from y<sup>e</sup> Indians, w<sup>th</sup> some Amendm<sup>ts</sup>, to w<sup>ch</sup> they desire the Concurrence of this H<sup>e</sup>." (pp. 20-1, Journal and Votes of the House of Representatives of New Jersey. Other instances of the same tenor appear on the same pages.)

Frothingham further says: "In 1738, the council was made a separate branch; the governor withdrew from it, and no longer was the presiding officer." (Note, p. 20.) As authority for this statement he refers to Mulford, 335, and herein lies the explanation of the error into which Mr. Frothingham has fallen. What Mulford says is this: "The Council were made a separate branch of the Legislature; the Governor refraining from *immediate* participation in any measure relating to Legislative proceedings." (*History of New Jersey*, p. 335.) Mulford evidently does not mean to say that the Council was separated from the House at this time, but that the Governor, who formerly presided over the Council, now withdrew and left that body

*Section II.—New York.*

For New York the story is quickly told. True to the governmental instincts of the Teutonic race, and inspired by the example of the New England colonies, the people of New York began to move for a representative government immediately after that colony came into the possession of the Duke of York; but the experience of the Stuarts with popular assemblies was not particularly reassuring, and, as a consequence, the request was postponed until it seemed necessary to make the grant for financial reasons. Intimations that the boon of self-government would be granted were forthcoming from time to time. In a letter<sup>1</sup> to a New York officer, under date of Feb. 11, 1682, the opinion was expressed that "his R<sup>n</sup> H<sup>s</sup>" would "condescend to y<sup>e</sup> desires of y<sup>e</sup> Colony in granting y<sup>m</sup> equall priviledges, in choosieing an Assembly & as y<sup>e</sup> other English plantations in America" had. The Duke himself expressed a like intention in a letter of March 28, 1682, upon the condition, however, that the colony "provide some certaine fonds for y<sup>e</sup> necessary support of y<sup>e</sup> governem<sup>t</sup>."<sup>2</sup> The hopes thus raised were soon realized. In the "*Instructions*" to Governor Dongan, issued Jan. 27, 1683, that official was ordered to summon a representative Assembly to join with himself and Council in making laws "fitt and necessary to be made and established for the good weale and governem<sup>t</sup>" of

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of itself a separate branch. Mulford was fully aware that the two houses did not sit together up to this time, as he mentions instances in which bills passed by one house were rejected by the other. "The bill prepared by the committee was passed by the House, and sent to the Governor and Council; but it met the fate of the preceding ones, it was rejected by a majority of the Council." Such is the language of Mulford in speaking of the fate of a bill at the meeting of December 7, 1710. (*History of New Jersey*, p. 310.) Other examples of similar import appear on the pages of Mulford.

<sup>1</sup> Colonial Documents of New York, III, 317.

<sup>2</sup> *Ibid.*, 317-318.

the colony.<sup>1</sup> Governor Dongan did as he was directed, and on Oct. 17, 1683, the first legislative Assembly of New York was convened.<sup>2</sup> It was a bicameral body, the Governor and Council constituting one house and the representatives the other.<sup>3</sup> At this meeting a very important act was passed—the “Charter of Libertys”<sup>4</sup>—in accordance with which the government of the colony was to be organized and administered under the superior control of the Duke of York. This charter provided that representatives chosen by the people should, with the Governor and Council, constitute “the supream and only legislative power under his Roy”<sup>5</sup> Highnesse.” Provision was made for two distinct houses. It was provided “Thatt all bills agreed upon by the said Representatives, or the major part of them,” should “bee presented unto the Governor and his Councell for their approbacon and consent,” and that “all and every which said bills so approved of and consented to by the Governor and his Councell,” should “be esteemed the laws of the province.” The charter was sent to the Duke of York and approved by him, October 4, 1684.<sup>6</sup> Shortly<sup>6</sup> after

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<sup>1</sup> Colonial Documents, III, 331.

<sup>2</sup> Journal of the Legislative Council of New York, Introduction, p. XI.

<sup>3</sup> Appended to the first bill of the session—the “Charter of Libertys”—to be mentioned presently, is found the following memorandum:

“NEW-YORKE, Oct. 26, 1683.

“The Representatives have assented to this bill, and order it to bee sent up to the Governo’r and Councell for their assent.

“M. NICOLLS, *Speaker*.”

“After three times reading, it is assented to by the Governour and Councell this thirtieth of October, 1683.

THO. DONGAN.

“JOHN SPRAGGE, *Clerk of the Assembly*.”

Brodhead’s *History of the State of New York*, II, 661, Appendix E.

<sup>4</sup> The Charter is printed in full in Appendix E of Brodhead’s *New York*, II, 659.

<sup>5</sup> Historical Magazine for Aug., 1862, Vol. VI, p. 233; Chalmers’ *Annals*, I, 588; Brodhead’s *New York*, II, 416, n.

<sup>6</sup> March 3, 1685.

his coronation, however, he vetoed it.<sup>1</sup> Governor Dongan was accordingly notified in a body of "*Instructions*"<sup>2</sup> issued May 29, 1686, that the charter was "repealed & disallowed." The law-making power was placed in the hands of the Governor and Council, and the representative body was abolished. The powers of the Governor were more specifically designated in his commission<sup>3</sup> of June 10, 1686. He was empowered "with the advice and consent of" the "Council or the major part of them, to make, constitute and ordain *Laws, Statutes and Ordinances* for the publick peace, welfare & good Government"<sup>4</sup> of the province. All such laws, however, were to be sent to England for royal approval within three months after their passage. In obedience to these instructions Governor Dongan dissolved the Assembly, January 20, 1687.<sup>5</sup>

The government of the colony thus devolved upon Dongan and his Council of five. This form was continued, under Andros as well, until Leisler took the government in his own hands in 1689. At his call an Assembly met in April, 1690, and again on September 15, of the same year. Both of these consisted of two houses. News of the usurpation was immediately sent to England,<sup>6</sup> and, on November 14, 1689, a commission<sup>7</sup> was issued to Henry Sloughter to be Governor of the colony. By this commission the representative Assembly so ruthlessly brushed aside by James II in 1685, was revived. The Governor was empowered "with the consent of" the

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<sup>1</sup> Colonial Documents, III, 357.

In a document entitled "Observacōns upon the Charter of New York," and bearing the same date as the veto, are set forth various reasons for withholding, or rather withdrawing, the royal assent. It is urged among other things that the charter "seems to take away from the Governor and Council the power of framing *Laws* as in other Plantations." This observation is made upon that clause which provides that bills passed by the representatives should be presented to the Governor and Council for their approval. Colonial Documents, III, 358.

<sup>2</sup> Colonial Documents, III, 369.

<sup>3</sup> *Ibid.*, 377.

<sup>4</sup> *Ibid.*, 378.

<sup>5</sup> Journal of the Leg. Coun. of New York, Introduction, XVII.

<sup>6</sup> Colonial Documents, III, 585.

<sup>7</sup> *Ibid.*, 623.

"Councill and Assembly or the major part of them," "to make constitute and ordain Laws Statutes @ ordinances for y<sup>e</sup> publique Peace, welfare and good Government" of the province.<sup>1</sup> This commission with some slight modifications formed the fundamental law of New York until the Revolution.<sup>2</sup> The first session of the legislature was held on April 9, 1691.<sup>3</sup> The two houses sat apart, the Governor presiding over the Council.<sup>4</sup> In 1736, however, it was declared "inconsistent" for the Governor to sit and vote as a member of the Council; hence he withdrew, and it was made a standing rule that the oldest councillor present should preside.<sup>5</sup>

*Section III.—Pennsylvania and Delaware.*

These two colonies may well be treated together inasmuch as the organic connection between them was not totally severed until the Revolution. Both were governed under the same colonial charters, and it was not until a comparatively late period that the bicameral system was introduced into their legislatures.

The first charter of government for Pennsylvania was that granted by William Penn on July 11, 1681.<sup>6</sup> This may be dismissed at once since it makes no provision for a legislative body.

The second "frame of government"<sup>7</sup> was granted on April 25, 1682, and by it a legislative body was constituted consisting of a Governor, Council, and General Assembly, the two latter

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<sup>1</sup> Colonial Documents, III, 624.

<sup>2</sup> Cf. Thompson's *History of Long Island*, I, 168.

<sup>3</sup> Smith remarks that the laws passed by this Assembly were the first ones deemed valid by the courts. *History of New York*, I, 98, n.

<sup>4</sup> The Governor and Council were appointed by the Crown. Colonial Documents, III, 623.

<sup>5</sup> Journal of the Leg. Coun. of New York, XXIX.

<sup>6</sup> "Certain Conditions, or Concessions," etc. *Charters and Constitutions*, II, 1516.

<sup>7</sup> *Ibid.*, 1518.

bodies being chosen by the people. The Council was to consist of seventy-two members and the Assembly of two hundred.<sup>1</sup> The Governor or his Deputy presided and had a "treble voice." The power of initiating legislation was in the hands of the Governor and Council. It was their duty to "prepare and propose" bills to be affirmed or rejected by the Assembly. Penn had given the science of government much and serious thought, and this mode of legislation seems to have been his favorite scheme. He would revert to the old Greek method of having legislation prepared in a *boulé*. Such a system, however, is not in harmony with Teutonic instincts and traditions, and a short space of time served to demonstrate the fact that the people would insist upon originating legislation in their popular assemblies. It should be added, however, that in this scheme of Penn's some provision was made for amendment by the Assembly. For the first eight days of the session the members of the Assembly were to "confer with one another" regarding the proposed legislation. If they so desired, a committee of twelve from the Council would be "appointed to receive from any of them proposals, for the alteration or amendment of any of the said proposed and promulgated bills." Upon the ninth day of the session the Assembly was to "give their affirmative or negative" to the proposed legislation.

Thus far our narrative has had to do with Pennsylvania alone; but on Aug. 24, 1682, Penn received by deed<sup>2</sup> from the Duke of York that land which has since become known as Delaware. From this time on we find the terms "*Province*" and "*Territories*" used to designate Pennsylvania and Delaware respectively. In the latter part of the same year the Province was divided into three counties—Bucks, Philadelphia, and Chester—and the Territories, likewise, into three—New Castle,

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<sup>1</sup> These numbers were found to be too large and were afterward reduced.  
<sup>2</sup> Proud's *History of Pennsylvania*, I, 201; Hazard's *Annals of Pennsylvania*, 1609-1682, 588, 590.

Kent, and Sussex.<sup>1</sup> These "three lower counties" were formally annexed to the Province by an "*act of union*" passed by the first Assembly on Dec. 7, 1682.<sup>2</sup>

The first Assembly under the charter met at Philadelphia on March 10, 1683.<sup>3</sup> In this the counties upon the Delaware were represented.<sup>4</sup> At this session a request was made by the Assembly for a new charter. The request was granted by the Governor, and a new charter drawn up by a committee<sup>5</sup> of six from each body was accepted and signed by Penn on April 2, 1683.<sup>6</sup> This was to constitute a frame of Government for "Pennsylvania and Territories thereunto annexed." The Council was to consist of eighteen and the Assembly of thirty-six, both elected by the people. Although the method of passing laws remained the same in the charter, a very essential change was made in practice. The Assembly complained that their prerogatives were restricted within too narrow bounds by being allowed only to confirm or reject bills, and demanded the right to originate legislation. This idea was embodied in a resolution of the Assembly and was approved by the Governor. Although protests were made by Penn against this privilege, it was exercised at intervals until 1696; at which time it was incorporated in a new frame of government.<sup>7</sup> The Assembly was now for the first time granted the charter privilege of originating bills. Bills passed by the Assembly were to be sent to the Governor for his approval or rejection, "with the advice of the Council."

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<sup>1</sup> Proud, I, 234.

<sup>2</sup> *Ibid.*, 206; Hazard, 611.

<sup>3</sup> Colonial Records of Pennsylvania, I, 57. The Council met on this date and the Assembly two days later. Cf. Proud, I, 235.

<sup>4</sup> Three councillors and nine assemblymen were chosen from each county, making seventy-two in the entire body. This number was much smaller than that called for by the charter, as it was deemed inconvenient to elect the large number there specified. The Governor approved the change. Proud, I, 237-8.

<sup>5</sup> Colonial Records, I, 69.

<sup>6</sup> Charters and Constitutions, II, 1527.

<sup>7</sup> See Gordon's *History of Pennsylvania*, 79-80, 106; Proud, I, 394-5; Hazard's *Annals*, 609. For this frame of government, see Poore's *Charters*, II, 1531.



Finally on the 28th of October, 1701,<sup>1</sup> the charter was issued which remained in force until superseded in Pennsylvania and Delaware by their respective state constitutions, both drafted in 1776. This charter provided that the legislative power should be vested in a representative Assembly composed of four members from each county. Laws were to be enacted by the Governor with the "consent and approbation" of this Assembly. Penn also, by letters patent,<sup>2</sup> appointed a "Council of state" consisting of ten men, who, among other duties, were to serve the Governor in an advisory capacity. Bancroft says,<sup>3</sup> in writing concerning the government in Pennsylvania in 1754, that the right to revise legislative acts was denied to the Council and that long usage confirmed the denial. This is no doubt legally true, but an inspection of the records reveals the fact that in practice the Council really did amend legislative acts. The Governor had a veto on all bills, and acted with the advice of the Council; hence it was necessary for the Assembly to frame their laws in such a way as to meet the approval of the Governor and his Council. This they did. At a meeting of the Council held January 22, 1749, three bills were sent to the Governor for his approval. Amendments were proposed to all of them, and they were returned to the Assembly.<sup>4</sup> Instances are also cited where the Assembly give notice to the Council that they agree to the amendments proposed.<sup>5</sup> In this legislation the theory differs from the practice. It somewhat resembles the method in vogue at the present time whereby members of Congress ascertain in advance the kind of bill to which the President will give his signature.

Up to the date of the last charter, Pennsylvania and Delaware were governed by the same legislature, with the exception of a period of two years extending from 1691 to 1693. The friction between the two colonies, however, had been all

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<sup>1</sup> Charters and Constitutions, II, 1536.

<sup>2</sup> Proud, I, 451, n.

<sup>3</sup> II, 397. (Last revised edition.)

<sup>4</sup> Colonial Records, V, 426.

<sup>5</sup> *Ibid.*, 426-7.

but continuous; consequently Penn provided in the new charter of 1701 that the Province and Territories might have separate legislatures in case of continued disagreement. The Territories demanded by virtue of this clause a legislature of their own, and in 1703 an agreement was effected by which their wish was realized. The two colonies retained their distinct legislatures under the same executive until the Revolution. The legislatures, as above noted, consisted of single chambers. In Delaware, the bicameral system was introduced by the constitution of 1776,<sup>1</sup> while in Pennsylvania the legislature consisted of a single house until the adoption of the constitution of 1790.<sup>2</sup> A unicameral legislature was the natural outcome of Penn's ideas of government as embodied in his various charters. Even in her first state constitution, that of 1776, Pennsylvania still clung to the single-chambered legislature. In this the influence of Franklin is apparent. He was in pre-revolutionary days, as Bancroft says, "the soul of the Assembly," and always resisted any change from what he termed the simplicity of a legislature of one house. He was also the President of the constitutional convention which drew up the state constitution of 1776, and then also championed with ability and success the idea of a single house.

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<sup>1</sup> Charters and Constitutions, I, 273.

<sup>2</sup> *Ibid.*, II, 1548.

## CHAPTER III.

### THE SOUTHERN COLONIES.

#### *Section I.—Maryland.*

It required but five years for the Maryland colony to outgrow the primary assembly and to appreciate the superior efficiency of the representative form. The several hundreds and the Isle of Kent were each instructed to elect deputies or burgesses to represent them at a meeting of the Assembly to be held at St. Mary's on Feb. 25, 1639. This they did, and on the first day of the session an act was passed "For the Establishing the house of Assembly."<sup>1</sup> It was declared by this act that the House of Assembly should consist of the Lieutenant-General, the Secretary of the province, the gentlemen summoned by special writ of the Lord Proprietary, the burgesses, and "such other Freemen (not haveing Consented to any the Elections as aforesaid)." In order not to make the transition from the primary to the representative assembly too abrupt, it was provided that those freemen who wished to do so might refrain from voting and then demand seats in the Assembly. This was actually done in some instances and seats were granted accordingly. The absurdity of the plan was soon seen, however, and it fell into disuse.

It was to be expected that those summoned by special writ would be looked upon as representing the interests of the

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<sup>1</sup> Proceedings of the Assembly, 1637/8-1664, pp. 81-2. See also Chalmers' *Annals*, I, 213; Bacon's *Laws of Maryland*, 1638, ch. I; Griffith's *Annals of Baltimore*, 7.

Lord Proprietary, and that the burgesses would consider themselves the only true representatives of the people. A strong community of interest sprang up among the burgesses and received emphatic expression in 1642. On July 18 of that year the burgesses, "either actuated by the spirit natural to representatives, or animated by the example of the Commons of England,"<sup>1</sup> desired to sit by themselves and have a negative on the acts of the remaining members of the Assembly.<sup>2</sup> It seems plain that the separation was desired not by a faction of the burgesses but by the entire body. This is evident from the fact that the motion was made by Burgess Robert Vaughan "in the name of the rest." The request was denied, however, by the Lieutenant-General, and for eight years longer the Assembly continued to sit as one house. It is clear that in the meantime the burgesses were becoming exceedingly jealous of their prerogatives, or rather of what they considered their prerogatives. For example, in July of 1642 the Lieutenant-General wished an appropriation for a military expedition against the Indians. The matter met with serious opposition on the part of the burgesses. In the course of the discussion the Lieutenant-General plainly apprises them that it is not his intention to counsel with them upon the advisability of such an expedition, in as much as decision in matters relating to peace and war was vested in him by the patent. In short, he desired to know the amount of their appropriation and not their opinions.<sup>3</sup> It is not the wont of representative bodies, however, to subside under a rebuff from an agent of the king. Royal opposition serves only to consolidate. Consequently, on Aug. 1, of the same year, Mr. Greene, burgess from St. Mary's hundred, objected to the passage of a certain bill on the ground that it was not voted for by the major part of the

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<sup>1</sup> Chalmers, I, 219.

<sup>2</sup> Proceedings of the Assembly, 1637/8-1664, p. 130; Bacon's *Laws of Maryland*, 1649, ch. XII.

<sup>3</sup> Proceedings of the Assembly, 1637/8-1664, 130-1.

burgesses, although it secured a majority of the Assembly as a whole.<sup>1</sup> Although the matter was decided against him and the Assembly declared one house, the claim of Mr. Greene, without precedent though it was, is interesting in showing that the line of demarcation between the burgesses and those summoned by special writ was being more distinctly drawn.

The separation was finally effected on the first day (April 6) of the session of 1650, by an act "for the settling of this present Assembly." It ran thus: "Bee it Enacted by the Lord Prop<sup>r</sup> w<sup>th</sup> the aduise & consent of the Counsell & Burgesses of this prouince now assembled. That this p<sup>nt</sup> assembly during the continuance thereof bee held by way of Vpper & Lower howse to sitt in two distinct roomes a part, for the more convenient dispatch of the business therein to bee consulted of. And th<sup>t</sup> the Gou<sup>r</sup> & Secretary, or any one or more of the Counsell for the Vpper howse."<sup>2</sup> The burgesses, "or any five or more of them" were to constitute the lower house. The two branches were declared to "haue the full power of, & bee two howses of Assembly to all intents and purposes." It was further declared that all bills passed by the two houses and indorsed by the Governor should be laws of the province, "after publicōn thereof, . . . as fully to all effects in Law as if they were aduised & assented unto by all the ffreemen of the province personally." From this time on we find the laws of the colony enacted "*By the Lord Proprietary with the advice and assent of the upper and lower house of this Assembly.*"<sup>3</sup>

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<sup>1</sup> Proceedings of the Assembly, 1637/8-1664, 141.

<sup>2</sup> *Ibid.*, 272-3. See also, Bacon's *Laws*, 1650, ch. I; Griffith's *Annals of Baltimore*, 13-14.

<sup>3</sup> Bacon says (*Laws of Maryland*, 1649, ch. XII), that the two houses were separated in 1649. There is, he says, no record of the act by which this was done, but he argues that the separation must have been made at some time prior to the last day (April 21) of the session of 1649, since the laws passed on that date were enacted "*By the Lord Proprietary, with the Assent and Approbation of the Upper and Lower Houses.*" The laws of this session as printed in the Maryland Archives, however, purport to have been passed by the Lord Proprietary by and with the consent of the General Assembly, no

*Section II.—Virginia.*

The account of the introduction of the system into the Virginia legislature must of necessity be brief, since the sources now available do not relate in a satisfactory way the details of the process of the separation of the Council and the House of Burgesses.

In June of 1619, Governor Yearly issued a call for a legislative Assembly to consist of two burgesses from each plantation, town or hundred. This, the first representative Assembly that convened in America, met in Jamestown on July 30, 1619. The twenty-two burgesses met in one body

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mention whatever being made of "Upper and Lower Houses." It is true, however, that in the manuscript book of laws (Liber C and W H), from which Bacon drew, we do find the upper and lower houses mentioned in the enacting clauses of laws of April 21, 1649; but the manuscript volume from which the laws were compiled (Liber A), as printed in the Maryland Archives, is older and considered by the editor, Dr. William Hand Browne, to be more reliable than the one used by Bacon. By adopting the reading of the laws as found in the Maryland Archives we are relieved from the necessity of supposing, as Bacon does, that an act was passed separating the two houses in 1649, but that the record of it has been lost. If such an act were passed in 1649, why repeat it in 1650? It seems more reasonable to suppose that the copyist of Liber C and W H, used by Bacon must have inserted the reference to the upper and lower houses, without considering that such an expression was not applicable to 1649.

Chalmer's states (*Annals*, I, 219-20), that the separation was made "during the distractions which ensued" in 1649; but since in his account of the colony of Maryland, he leans confidently upon the arm of Bacon, the origin of his error, if such it be, is apparent.

Hannis Taylor (*The Origin and Growth of the English Constitution*, p. 24) says that the legislature was divided into two chambers in 1647, and refers the reader to Winsor, *Nar. and Crit. Hist. of Amer.*, III, 536, and to Doyle, *Virginia, etc.*, pp. 286-291 for an account of the early Assemblies. The writer in Winsor, Mr. W. T. Brantly, says, however, on the page above indicated that "At this session [1650] there was first made a permanent division of the Assembly into two houses." Doyle, however, says (p. 291) that the separation was made in 1647. In this he is obviously incorrect. C. E. Stevens in his *Sources of the Constitution*, p. 18, copies Taylor's statement, apparently without consulting Winsor.

with the Governor and Council, and so continued to do until 1680. The testimony of Beverley is definite upon this point. "Before the year 1680," he says, "the council sat in the same house with the burgesses of assembly, much resembling the model of the Scotch parliament; and the Lord Colepepper, taking advantage of some disputes among them, procured the council to sit apart from the assembly; and so they became two distinct houses, in imitation of the two houses of parliament in England, the lords and commons; and so is the constitution at this [1705] day."<sup>1</sup> Culpepper seems to have been adroit in playing off one branch of the Assembly against the other to subserve his own interests and further his political schemes. More than once does he appear in this role.

### *Section III.—The Carolinas.*

In the legislative history of the Carolinas there is little that is of importance to us in our present study, since in South Carolina the bicameral system has prevailed from the beginning of the legislative history of that colony, and in North Carolina it is impossible to determine just when or how the system originated.

According to the "*Concessions*"<sup>2</sup> issued by the proprietors in 1665 for the government of North<sup>3</sup> Carolina, the legislative power was vested in a General Assembly consisting of twelve "Deputyes or representatives" together with the Governor and Council. The latter body was to be appointed by the Governor, and was to consist of not less than six nor more than twelve members. This Assembly was to constitute one

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<sup>1</sup> History of Virginia, 187-8, Campbell's Edition.

<sup>2</sup> Colonial Records of North Carolina, I, 79-92.

<sup>3</sup> It seems convenient to use the terms "North" and "South" but the division between the two was not really made until they became royal colonies.

house<sup>1</sup> over which the Governor or his Deputy was to preside.

The *Fundamental Constitutions*<sup>2</sup> of Locke and Shaftesbury of 1669 provided for a "Parliament" consisting of the proprietors or their deputies, landgraves, cassiques, and popular representatives. They were to sit together in one room and each member was to have one vote.<sup>3</sup> All bills were to be prepared by a Grand Council, and nothing whatever was to be proposed in the Parliament which had not previously been passed by the Council.<sup>4</sup> It was readily seen by the proprietors that this constitution could not be enforced at once on account "of the want of Landgraves and Cassiques and a sufficient number of people;" hence a temporary constitution,<sup>5</sup> embodied in a list of instructions to the Governor and Council, was sent over in 1670 and put into operation. This constitution provided for a unicameral legislature consisting of twenty representatives chosen by the people and five deputies appointed by the proprietors. All laws were to be ratified by the Governor and three at least of the five deputies. Although this Assembly consisted of a single chamber it is not difficult to perceive the germ of the bicameral system in this provision for ratification by the three deputies. It was no doubt from this idea that the upper house was evolved. It is impossible to say just when the separation of the deputies and representatives took place. It was probably a gradual process which received formal recognition in 1691. Since the deputies could defeat any measure by refusing to ratify it, it seems probable that they did not care to attend the sessions of the

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<sup>1</sup> The language of these "*Concessions*" is almost identical with that of the New Jersey Concessions of Feb. 10, 1665, under which two houses were organized. The Carolina construction of the document seems far more plausible.

<sup>2</sup> Charters and Constitutions, II, 1397.

<sup>3</sup> *Ibid.*, 1464.

<sup>4</sup> *Ibid.*, 1403.

<sup>5</sup> Colonial Records of N. C., 181.



Assembly except when they wished to promote some legislation favorable to the interests of the proprietors.<sup>1</sup>

On Nov. 8, 1691, a body of instructions<sup>2</sup> was issued to Governor Ludwell. This document constituted a new frame of government for the colony. The legislature was now to sit in two houses. The lower house was to consist of twenty representatives, while the landgraves, cassiques and deputies were designated as the upper house.

In 1729 proprietary government in North Carolina ceased with the sale of the colony to the crown, but in the instructions<sup>3</sup> to the royal Governor the legislature of two houses is plainly continued.<sup>4</sup>

The constitution of 1776 provided for a Senate and a House of Commons.<sup>5</sup>

South Carolina had a separate legislature but was under the same Governor with the northern colony until 1712. Sources of information for the early history of the Carolinas are very meager, but it seems clear that the legislature of South Carolina, practically from its beginning, consisted of two houses. Ramsay says<sup>6</sup> that the first legislature assembled in 1674<sup>7</sup> and consisted of the "governor, and upper and lower house of assembly; and these three branches took the name of parliament." The legislative records do not begin until 1682.<sup>8</sup> It seems plain, too, that though the legislature consisted of two houses, it lacked some of the most essential attributes of the bicameral system in its highly developed form. Although no serious attempt was made to put the Fundamental Constitutions into operation as a whole, yet an effort was made to apply some of their provisions. On December 16, 1671, a short set of instructions was framed for Governor Yeamans in

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<sup>1</sup> See Bassett's *The Constitutional Beginnings of North Carolina*, J. H. U. Studies, Twelfth Series, III, 57-8.

<sup>2</sup> Colonial Records, I, 373.

<sup>3</sup> *Ibid.*, III, 90.

<sup>4</sup> See Sec. 14 of the Instructions, p. 93.

<sup>5</sup> Charters and Constitutions, II, 1411.

<sup>6</sup> History of South Carolina, I, 34-5.

<sup>7</sup> This date is doubtful.

<sup>8</sup> Statutes of South Carolina, I, Preface, iii.

which he was directed to have all legislation prepared in the Council. "For there is noe thing to be debated or voted in y<sup>e</sup> Parl<sup>t</sup>., but w<sup>t</sup> is proposed to them by y<sup>e</sup> Council." <sup>1</sup> The popular branch, however, would not consent willingly to have its power thus curtailed, and agitation upon the matter continued until the final settlement in 1694. In that year Governor Smith made the following significant announcement to the Assembly: "The proprietors have consented that the proposing power for the making of laws, which was heretofore lodged in the governor and council only, is now given to you as well as the present council." <sup>2</sup> "Henceforth," says Rivers, <sup>3</sup> "the Assembly claimed the privileges and usages of the House of Commons in England, and the proprietors allowed the claim." Under the royal government the bicameral system was retained. <sup>4</sup>

Under the constitution of 1776 <sup>5</sup> the legislature consisted of two houses, and the Council was chosen by the Assembly. The constitution of 1778 <sup>6</sup> provided for a Senate and a House of Representatives.

#### *Section IV.—Georgia.*

The history of Georgia contains almost nothing of importance for our present purpose. The colony was surrendered to the Crown in 1752, and two years later a royal government <sup>7</sup> was established much resembling that of South Carolina. The legislature was bicameral, as might have been expected; but in making a state constitution in 1777, Georgia followed the precedent of Pennsylvania and established a legislature consisting of a single house. <sup>8</sup>

In the constitution of 1789, however, provision was made for "two separate and distinct" houses. <sup>9</sup>

<sup>1</sup> Rivers' *Historical Sketch of South Carolina*, App., p. 369.

<sup>2</sup> Rivers, 171. Quoted from MS. Journal of the Commons, May 15, 1694. Also quoted in Winsor, *Narr. and Crit. Hist. of Amer.*, V, 314.

<sup>3</sup> p. 171. <sup>4</sup> See Ramsay, I, 95. <sup>5</sup> Charters and Constitutions, II, 1617.

<sup>6</sup> *Ibid.*, 1621.

<sup>7</sup> Cf. Stevens' *History of Georgia*, II, 370-389; also Jones' *History of Georgia*, II, 460-487.

<sup>8</sup> Charters and Constitutions, I, 378, 379.

<sup>9</sup> *Ibid.*, 384.

## CHAPTER IV.

### THE FEDERAL CONSTITUTION.

When the framers of the Constitution met in 1787 many of them were not novices in the science of constitution-making. On May 10, 1776, Congress had "recommended to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs" had "been hitherto established, to adopt such government as" should, "in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general."<sup>1</sup> Eleven<sup>2</sup> of the states acting upon this recommendation had adopted new constitutions before 1781. The experience of these four years so prolific of new constitutions could not fail to be beneficial to the members of the Federal Convention, and particularly so from the fact that many of them had been members of the constitutional conventions in their respective states.<sup>3</sup> We are not surprised, then, to find immediate precedents for many of

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<sup>1</sup> Journals of Congress, Vol. II, 166. The resolution was published with a suitable preamble on May 15. *Ibid.*, 174.

<sup>2</sup> Connecticut prefixed a few short introductory paragraphs to her charter and retained it until 1818. Rhode Island substituted the sovereignty of the Commonwealth of Rhode Island for that of the King and thus retained her charter until 1842.

<sup>3</sup> Nathaniel Gorham was a member of the Massachusetts convention and one of a committee appointed to draft the constitution. Madison was a member of the Virginia convention of 1776. Gouverneur Morris, Jay, and Livingston were appointed a committee to draft the New York constitution of 1776. Morris also took a prominent part in the debates of the convention.

the elements of the Federal Constitution in these early state constitutions. This is especially true in case of the bicameral system. When the motion was made in the Convention that the national legislature should consist of two houses, the delegates from Pennsylvania alone voted in the negative. All of the states except Pennsylvania and Georgia had the bicameral system in their legislatures and naturally favored its introduction into the national legislature. The sentiment in Georgia was evidently in favor of two houses, although she had at the time a single-chambered legislature. The delegates from that state voted with the majority, as we have seen; and, in 1789, the system, pure and simple, was introduced by her new constitution. It is highly probable, too, that Pennsylvania was in favor of the system, as we find it incorporated in her constitution of 1790. Madison tells<sup>1</sup> us that the delegates from Pennsylvania voted in the negative on this question probably in deference to the opinion of Franklin, who favored a legislature composed of a single house.<sup>2</sup>

The views of the states thus expressed through their constitutions could not fail to attract the attention of the members of the Federal Convention. Colonel Mason, in speaking of the advisability of having the national legislature to consist of two branches, said<sup>3</sup> that he was thoroughly convinced that the American people desired more than one house in their national legislature and cited as proof of his assertion the fact that all of the states except Pennsylvania (and he should have excepted Georgia,<sup>4</sup> also), had incorporated the bicameral system into their constitutions.

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<sup>1</sup> Elliot's *Debates*, V, 135.

<sup>2</sup> The fact that Congress under the Articles of Confederation was composed of a single house was no doubt largely due to the influence of Franklin. The committee that drafted the Articles based them upon the plan of the same name submitted to Congress by Franklin on July 21, 1775. This plan, of course, provided for a unicameral legislature. The connection between the two documents is evident from a comparison of their texts. For Franklin's plan of 1775, see the Secret Journals of Congress, Vol. I, p. 283.

<sup>3</sup> Elliot's *Debates*, V, 217.

<sup>4</sup> Charters and Constitutions, I, 378.

Of the two opposing plans of government, that introduced by Governor Randolph and familiarly known as the "Virginia Plan" provided for a legislature consisting of two houses; while the plan brought before the Convention by Mr. Patterson, and known as the "New Jersey Plan," advocated a legislature composed of a single house. It must not be supposed, however, that the advocates of the "New Jersey Plan" were of necessity antagonistic to the bicameral system. They believed that the Articles of Confederation should be "revised," "corrected," and "enlarged," and were opposed to the drafting of a form of government either entirely or essentially new. Indeed many of them considered that the Convention would be exceeding its authority by going beyond the mere revision of the Articles. Consistent adherence to this idea would involve the advocacy of a single-chambered legislature such as existed under the Articles of Confederation.

Thus by 1790, the Federal and all of the state legislatures were composed of two houses; and the legislatures of all of the other states upon their admission were similarly constituted, with the single exception of Vermont. Although not admitted until 1791, Vermont formed a constitution as early as 1777. This constitution<sup>1</sup> was an adaptation of the Pennsylvania constitution of 1776. This was due to the influence of Dr. Thomas Young, a man of note and a citizen of Philadelphia. Dr. Young had shown a great interest in the affairs of Vermont and, when in a letter<sup>2</sup> dated April 11, 1777, he recommended<sup>3</sup> the Pennsylvania constitution as a model, his suggestion was speedily adopted. It has been thought that the Vermont constitution was drafted by Dr. Young, but there seems to be no positive evidence upon the matter.

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<sup>1</sup> Charters and Constitutions, II, 1857.

<sup>2</sup> This letter is printed in Thompson's *Vermont*, pt. II, 106.

<sup>3</sup> "This constitution," says Dr. Young, "has been sifted with all the criticism that a band of despots were masters of, and has bid defiance to their united powers." Thompson's *Vermont*, pt. II, 106.

The constitutions of 1786<sup>1</sup> and 1793<sup>2</sup> continued the single-chambered legislature, but an amendment to the latter, adopted in 1836,<sup>3</sup> made "the general assembly of the State of Vermont" to consist of a Senate and a House of Representatives.

From 1836 to the present time the state legislatures have uniformly consisted of two houses.

In conclusion, then, we may note the fact that the causes which operated to separate the colonial legislatures into two branches were different in the different colonies; and in most of them there was a gradual evolution of the system influenced either consciously or unconsciously by the English model. This English influence no doubt accelerated the appearance of the bicameral system. It was only six years after the founding of the colony of Massachusetts Bay that the two branches of the legislature were declared coördinate, and after a lapse of fourteen years they were deliberating as well as voting separately.

Our survey of the subject also leads us to conclude that the bicameral system in the Federal Constitution is, in its growth and development, essentially American; but the bicameral principle, the germ and genesis of the institution, must be sought on foreign soil. That there should be a sentiment in the Convention of 1787 all but unanimous in its favor, is not strange when we consider the abundant precedent therefor in the state constitutions, the colonial governments, and more remotely, in the English Constitution. In the gradual evolution of the system we would naturally expect to find it a feature of the Articles of Confederation, and such doubtless would have been the case were it not for the influence of Franklin and the example of the Continental Congress.

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<sup>1</sup> Charters and Constitutions, II, 1869.

<sup>2</sup> *Ibid.*, 1877.

<sup>3</sup> *Ibid.*, 1883.







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## THE EARLY RELATIONS BETWEEN MARYLAND AND VIRGINIA.

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### INTRODUCTION.

The purpose of this paper is to give an account of the relations between Virginia and Maryland from the settlement of the latter colony to the agreement between Lord Baltimore and the agents of Virginia in November, 1657, when Lord Baltimore was permitted to assume control of the government of his province, which had been taken out of his hands five years before by the commissioners of Parliament and since that time held by the Puritans.

The unfriendly relations, which existed between Maryland and Virginia for a long period and which have been perpetuated in a local way in the boundary disputes of our own times, were the historic outcome of the loose and careless way in which the English territory in the New World was granted out by the King, and the want of geographical knowledge on the part of those who had jurisdiction over matters involved in the first controversies. The original grant to the Virginia Company included a large part of the present area of the United States. The territory subsequently granted to Lord Baltimore was, of course, carved out of this original grant to the Virginia Company. While the Virginians strenuously opposed the Maryland charter, it is not likely that any serious difficulty would have arisen, had it not been for Claiborne's settlement on Kent Island. His case was not decided in

England until 1638, six years after the charter of Maryland was granted to Cecilius Calvert. Meanwhile, in every act of resistance to the Proprietary of Maryland, Claiborne was backed by the strongest expressions of encouragement and approval from the King and from the Council of Virginia.

A few years later the relations between the two colonies were further complicated by the expulsion of a large number of Puritans from Virginia and their settlement in Maryland. During the Protectorate, when the hand of Lord Baltimore was powerless, these Puritans quarreled with the Catholics and a state of civil war for some time prevailed. Claiborne was in no way responsible for this state of affairs, and although he was one of the commissioners appointed by Parliament for the reduction of the colonies to the authority of the Commonwealth of England, he seems to have had very little to do with Maryland at this period.

As the Puritan element in the early history of Virginia has been almost entirely overlooked, more space has been given to the history of the Puritans in that colony than would otherwise have been necessary.

## I.

### OPPOSITION TO LORD BALTIMORE'S CHARTER AND THE DISPUTE OVER KENT ISLAND.

In October, 1629, George Calvert, Baron Baltimore, arrived in Virginia on his way to England from his plantation in Newfoundland. He had already addressed a letter to his majesty signifying his intention of asking for a grant of land in Virginia,<sup>1</sup> in order that he might transfer his colony from Newfoundland to a more congenial climate. He was rather coldly received by the Virginians, who had received some intimation of his intention to settle in their midst. Being

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 15.

very zealous in their efforts to exclude Romanists from their colony, they tendered to him the oaths of supremacy and allegiance. These as a professed Catholic he could not take, and accordingly departed for England.<sup>1</sup> The following brief entry on the Virginia Court Records is the only reminiscence of this visit, but it serves to illustrate the state of feeling existing at the time in reference to this distinguished visitor. "Thomas Tindall to be pilloried two hours for giving my Lord Baltimore the lie and threatening to knock him down."<sup>2</sup>

This visit of Lord Baltimore to Virginia made the inhabitants of that colony uneasy, knowing as they did the high favor in which he stood at court. A petition, therefore, was addressed to the King, on the 30th of November, 1629, by Dr. John Pott, the Governor, Samuel Mathews, Roger Smith, and William Claiborne, members of the Council, telling of Lord Baltimore's visit, and asking for a confirmation of their rights and protection for their religion.<sup>3</sup>

In May of the following year Claiborne, the Secretary of the colony of Virginia, was sent to England for the purpose of preventing the confirmation of a grant of land about to be made to Lord Baltimore south of the James.<sup>4</sup> The protest was successful for the time being. Lord Baltimore, however, did not relinquish his plan, and two years later succeeded in obtaining a grant north of the Potomac of as extensive a territory, and with as ample powers of government, as he could have hoped for. He died in April, 1632, before the papers passed the seal, and the grant was confirmed to his son Cecilius Calvert on the 20th of June, 1632.

Lord Baltimore's charter described the territory conveyed as *hactenus inculta* and inhabited only by savages. This was not true of the whole territory as Kent Island in the Chesapeake

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 16.

<sup>2</sup> Henning, I, 552.

<sup>3</sup> Maryland Archives, Council Proceedings, I, 16.

<sup>4</sup> Browne, *History of Maryland*, 16.

had been previously settled under the Virginia government by William Claiborne, the Secretary of State of that colony. Claiborne had been for several years engaged in trading with the Indians along the waters of the Chesapeake and its tributaries. For this purpose licenses were issued to him by the Governors of Virginia in the years 1627-28-29, giving him ample authority to trade with the natives for corn, furs, or any other commodity, and to make discoveries.<sup>1</sup> In the year 1629, he seems to have established a trading post on Kent Island, although the island was not regularly settled until two years later.

Encouraged by the success of his enterprises in Chesapeake Bay, Claiborne decided to extend his trade beyond the limits of Virginia. For this purpose he entered into partnership with certain parties in London, Cloberry and Company, and obtained a special license from the King, dated May 16, 1631.<sup>2</sup> This license seems to have been drawn up by Sir William Alexander, the Scottish Secretary, under the privy seal of Scotland, and was obtained with a special view to carrying on trade with Nova Scotia, although the New England colonies were also mentioned in it, and Claiborne was authorized to trade for corn, furs, or any other commodity, in all those parts of America for which patents had not already been granted for sole trade. Nova Scotia had been granted to Sir William Alexander several years before, under the Scottish seal, to be held of the Crown of Scotland.<sup>3</sup> This accounts for Claiborne's license being issued under the seal of Scotland instead of England. It is hard to say just what the validity of such a paper was, or whether it had any validity at all. It was certainly equally as valid as the grant to Sir William Alexander under the seal of Scotland,<sup>4</sup> which was never called in question. It is important to note this license, because it was

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 158-161.

<sup>2</sup> *Ibid.*, I, 19.

<sup>3</sup> Purchas, Vol. IV, 1871.

<sup>4</sup> Chalmers, *Annals*, 212.

on the technicality that a paper under the seal of Scotland could not be argued against one under the seal of England, that the case was decided against Claiborne by the Commissioners of Plantations in 1638. Governor Harvey of Virginia also issued a license to Claiborne a few months after the one just referred to, authorizing him to "go unto the plantations of the Dutch, or unto any English plantation."<sup>1</sup>

In 1631 Kent Island was "planted and stocked" by Claiborne and his partners. The trading post was converted into a regular plantation. Captain William Claiborne, according to his own statement, "entered upon the Isle of Kent, unplanted by any man, but possessed by the natives of that country, with about 100 men and there contracted with the natives and bought their right, to hold of the Crown of England to him and his company and their heirs, and by force or virtue thereof William Claiborne and his company stood seized of the said Island."<sup>2</sup> There is no mention in the Virginia records of any formal grant to Claiborne by the Governor and Council, and his own language seems to imply that there was none, but that he based his claims solely on occupancy and purchase from the Indians.

The principal objections that have been raised to Claiborne's title to Kent Island may be classed under two heads, (1) that the Virginia colony had no right to the land in question at the time of its settlement, as their charter had been taken away several years before; and (2) that, even recognizing the jurisdiction of Virginia, Claiborne had no grant of land from the government of that colony, and hence that the settlement was merely a trading post.

The first of these objections is untenable. The colony of Virginia had as much right to Kent Island, at the time it was settled by Claiborne, as they had to the land upon which they were seated at Jamestown. There was no charter for

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 163.

<sup>2</sup> *Ibid.*, II, 162.

either, but their rights had been repeatedly confirmed by the King, and all rights in the colonies at this time depended absolutely upon his word. The fact that the charter of the London Company had been annulled did not affect the rights of the colony to settle lands within the territory originally comprised in the grants to the Company, provided such lands had not already been granted by the Crown to other parties. This principle is distinctly stated in the commission issued to Governor Wyatt by James I shortly after the dissolution of the Company in 1624,<sup>1</sup> and again in a proclamation from Charles I in 1625, in explanation of the Quo Warranto proceedings.<sup>2</sup> This right was also confirmed by a special letter on the subject from the King's Council to the Governor and Council of Virginia, under date of July 22, 1634, in these words: "We do hereby authorize you to dispose of such proportions of lands to all those planters, being freemen, as you had power to do before the year 1625."<sup>3</sup>

In answer to the second objection it may be said that although there is no record of a grant to Claiborne, throughout the entire controversy with Lord Baltimore the Virginia Council recognized the validity of his title. It is further stated that there was no regular settlement on the island but only a trading post. Such was not the case. It appears from certain depositions taken in Virginia in May, 1640, in the case of Claiborne vs. Clobery, *et al.*, that the island was stocked with between 150 and 200 cattle, that orchards and gardens were laid out, that mills were constructed, and that all the usual appurtenances of a permanent plantation were there.<sup>4</sup> It also appears that women were resident upon the island,<sup>5</sup> a fact which has been often denied, and there is also reference made

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<sup>1</sup> Hazard, *Collection of State Papers*, I, 189.

<sup>2</sup> *Ibid.*, I, 203.

<sup>3</sup> Chalmers, *Annals*, Chap. V, note 16.

<sup>4</sup> Maryland Archives, Council Proceedings, II, 187, 196, 199, &c.

<sup>5</sup> *Ibid.*, 183 and 236.

to a child, who was slain by the Indians.<sup>1</sup> In the year 1632, the plantation was represented in the Virginia Assembly by Captain Nicholas Martian,<sup>2</sup> an ancestor of George Washington.<sup>3</sup> The minister in charge of the settlement was Rev. Richard James, a clergyman of the Established Church.<sup>4</sup>

Such was the condition of affairs when, on the 20th of June 1632, the charter of Maryland was granted to Lord Baltimore. This grant called forth a loud remonstrance from the Virginia people.<sup>5</sup> They protested against the division of their territory and the dismemberment of their colony. They claimed that the mere fact of the dissolution of the Company did not infringe the rights of the colony to lands within the former grants to the Company. This protest came from the colony as a whole and not from Claiborne, as has sometimes been stated. The matter was heard and answered at the Star Chamber July 3, 1633. Their Lordships decided to "leave Lord Baltimore to his charter and the other parties to the course of Law."<sup>6</sup> This was not a decision against Claiborne's claims to Kent Island, but against the wholesale claim of the colony of Virginia to all lands, whether vacant or settled, within their former grant.

Claiborne and his associates, hoping no doubt that the remonstrance of the Virginia colony would be effective in preventing Lord Baltimore's settlement in their territory, had deferred making any special plea on their own behalf until the result of the general decision should be known. As soon, however, as the decision was rendered against the claims of Virginia, Claiborne and his partners began to petition the King and Council for the protection of their interests. They claimed that they were not within Lord Baltimore's jurisdiction, as his charter comprehended only unsettled lands,

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 206.

<sup>2</sup> Hening, I, 154.

<sup>3</sup> *Virginia Magazine of History and Biography*, April, 1894.

<sup>4</sup> Dr. Ethan Allen, *MS. Sketch of Old Kent Parish*, in Whittingham Library.

<sup>5</sup> Maryland Archives, Council Proceedings, I, 17.

<sup>6</sup> *Ibid.*, I, 21.

while they were a part of the colony of Virginia, having settled the island under that government before the grant to Lord Baltimore. The first petition was that of Sir John Wolstenholme and "other planters with Captain William Claiborne in Virginia," showing that they had settled the island with great expense, and praying that they might enjoy the same without interruption, and that Lord Baltimore might settle in some other place.<sup>1</sup> This was in November, 1633, just as Leonard Calvert was setting sail with the first colonists for Maryland.

Before leaving England the first settlers received from Lord Baltimore a set of instructions by which they were to be governed in planting the new colony. The fifth article of these instructions contains directions concerning Captain Claiborne. Lord Baltimore seems to have taken in the situation and to have recognized the importance of conciliating Claiborne. He directed his brother, upon his arrival in Virginia, to write to Claiborne; invite him to an interview; to tell him that his Lordship, understanding that he had "settled a plantation there within the precincts of his Lordship's patent," was "willing to give him all the encouragement he could to proceed;" and that Clobery and Company had asked for a grant of the island to them, "making somewhat slight of Captain Claiborne's interest," but that his Lordship had deferred the matter until he could come to an understanding with Claiborne. The article concludes with the command that if Claiborne refuses to come to him, he is to let him alone for the space of one year.<sup>2</sup> Unfortunately, these instructions were not carried out in all particulars.

In July preceding, the King had written to the Governor and Council of Virginia informing them that Lord Baltimore was about to settle Maryland and commanding them to treat him with the courtesy and respect due to a person of his rank,

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 24.

<sup>2</sup> Calvert Papers, 131.



and to allow his servants and planters to buy and transport to their colony such cattle and other commodities as the Virginians could spare.<sup>1</sup> Lord Baltimore did not conduct to America in person his colony, but sent it out under the command of his brother Leonard Calvert. Leonard arrived in Virginia with his people in February, 1634, and remained there a few days in order to procure fresh supplies before proceeding to Maryland. While in Virginia he had an interview with Claiborne in which he formally notified him that henceforth he must consider himself a member of the Maryland colony and must "relinquish all relation and dependence" upon Virginia. At the next meeting of the Virginia Council a few days later, on the 14th of March, 1634, "Claiborne requested the opinion of the board, how he should demean himself in respect of Lord Baltimore's patent and his deputies now seated in the Bay." "It was answered by the board that they wondered why there should be any such question made. That they knew no reason why they should render up the rights of that place of the Isle of Kent, more than any other formerly given to this colony by his Majesty's patent; and that, the right of my Lord's grant being yet undetermined in England, we are bound in duty and by our oaths to maintain the rights and privileges of this colony. Nevertheless, in all humble submission to his Majesty's pleasure, we resolve to keep and observe all good correspondence with them, no way doubting that they on their parts will not intrench upon the interests of this his Majesty's plantation."<sup>2</sup> Backed by the authority of the Governor and Council of Virginia, Claiborne refused to consider himself a member of the Maryland colony and to yield his right to trade in the waters of the Chesapeake without license from Lord Baltimore.

Shortly after the Maryland colony had arrived at St. Mary's, charges were preferred against Claiborne by Captain Henry

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 22.

<sup>2</sup> *Ibid.*, II, 164.

Fleete to the effect that he was inciting the Indians to acts of hostility against the new settlement. Complaint was immediately made by the Maryland authorities to the Governor of Virginia, who put Claiborne under bond not to leave Jamestown until the charges were investigated. For this purpose commissioners were appointed by both governments, who met at Patuxent on the 20th of June, 1634, and proceeded to examine the Chief of the Patuxents and other principal men as to the truth of Fleete's charges. The commissioners on the part of Virginia were Samuel Mathews, John Utie, William Peirce, and Thomas Hinton; those on the part of Maryland were George Calvert and Frederick Winter. Claiborne and several others were also present. The result was a complete vindication of Claiborne. The Chief of the Patuxents indignantly denied the charges, giving Captain Fleete the lie, and saying that if he were present he would tell him so to his face. He further added that he wondered that they should take any notice of what Fleete said, whereupon the Virginia commissioners, by way of explanation, said that the gentlemen of Maryland "did not know Captain Fleete so well as we of Virginia because they were lately come."<sup>1</sup> Fleete himself subsequently admitted the charges to be false, saying, by way of apology, that he had not made them under oath.<sup>2</sup> Fleete had been a rival of Claiborne in the fur trade, and upon the arrival of Baltimore's colony had pursued exactly the opposite policy, casting in his lot with the government at St. Mary's. Hence it was natural for one, who upon other occasions gave evidence of unscrupulousness of character, to try to prejudice the minds of the Marylanders against his rival.<sup>3</sup>

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 164-167.

<sup>2</sup> Calvert Papers, 141.

<sup>3</sup> While allowing for his propensity to misrepresent facts when it was to his interest to do so, we know Fleete did good service to both colonies. Returning to Virginia he made friends with Claiborne. Some twenty years later these old rivals jointly petitioned the Virginia Assembly for authority to make discoveries towards the South and West. Fleete ended his career in Lancaster County, Virginia.

The charges against Claiborne, however, reached the ears of Lord Baltimore, and in September, 1634, he ordered his brother to seize the person of Claiborne and to detain him a close prisoner at St. Mary's until his Lordship's pleasure might be known. Calvert was also directed to take possession, if possible, of the plantation on Kent Island.<sup>1</sup>

At first Governor Harvey of Virginia seems to have taken the popular side of the controversy, but after the Marylanders were actually settled at St. Mary's, seeing no doubt that Lord Baltimore's influence would ultimately prevail against all attacks upon his charter, he warmly espoused the cause of the new colony. This, as we shall see, led to an insurrection in Virginia the following year, the upshot of which was that Governor Harvey was deposed from office and sent to England.

On the 15th of December, 1634, Lord Baltimore sent to Secretary Windebank to ask for a letter of thanks from the King to Sir John Harvey, for the assistance he had given to his Maryland plantation against "Claiborne's malicious behavior and unlawful proceedings." He said that his plantation, then in its infancy, would be in great danger of being overturned, if such letters were not sent off by the ship then ready to sail. Three days later a private letter from Secretary Windebank was obtained thanking Governor Harvey and desiring him to "continue his assistance against Claiborne's malicious practices." About ten days later the King wrote to Governor Harvey, stating the reasons for his grant to Lord Baltimore and desiring him to continue his assistance to Maryland. The tone of this letter, however, is very different from that of the one written by Secretary Windebank.<sup>2</sup> There is no mention in it of Claiborne or his "malicious practices." Charles I seems to have been a staunch friend to Claiborne. Throughout the whole controversy the King seems to have been on his side, and there is not a word against Claiborne

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 168.

<sup>2</sup> *Ibid.*, I, 25-27.

and his claims to Kent Island, with the exception of the private letter referred to above from Secretary Windebank to Harvey, until the decision against him by the Commissioners of Plantations in 1638. It is difficult to understand the cause of his influence with the King.

In October, 1634, the King was petitioned by Cloberry and Company, Claiborne's partners in London, stating that Baltimore was about to dispossess them of Kent Island by force. This petition was occasioned by Baltimore's letter of September 4, to Governor Calvert, ordering him to seize the person of Claiborne and to take possession of the plantation. It drew from the King a very remarkable letter to the Governor and Council of Virginia, dated October 8, 1634, in which he says that Baltimore's interference with the planters on Kent Island is "contrary to justice and to the true intention of our grant to the said Lord: we do therefore hereby declare our express pleasure to be that the said planters be in no sort interrupted in their trade or plantation by him or any other in his right, . . . . and we prohibit as well the Lord Baltimore, as all other pretenders under him or otherwise to plantations in those parts to do them any violence, or to disturb or hinder them in their honest proceedings and trade there."<sup>1</sup> The King had made the grant to Lord Baltimore and he here explains the meaning of that grant.

Relying upon this letter and other assurances from the King, and from the Council of Virginia, Claiborne continued to trade in the waters of the Chesapeake. On the 5th of April, 1635, a pinnace from Kent Island in command of Thomas Smith was seized in the Patuxent River by Captain Fleete and Captain Humber for trading in Maryland waters without a license from the Proprietary. Smith showed copies of his Majesty's commission and the letters confirming it, but the Marylanders disregarded them saying they were false copies,<sup>2</sup> and the vessel

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 29.

<sup>2</sup> Calvert Papers, 141.

and goods were confiscated. This brought matters to a crisis. For the future Claiborne took the precaution of arming his vessels to prevent their being seized by the Maryland authorities. A collision soon took place, April 23, 1635, in the waters of the Pocomoke, between a vessel belonging to Claiborne, under command of Lieutenant Ratcliffe Warren, and two from St. Mary's under Captain Thomas Cornwallleys. The Marylanders lost one man, while on the other side Warren and two of his men were killed and the vessel surrendered. A second fight occurred on the 10th of May, also in the Pocomoke River, in which Thomas Smith commanded a vessel of Claiborne's, and more blood was shed. Claiborne's men seem to have been the successful parties in this fight, and they were able to maintain themselves on Kent Island and continue their trade for two years longer.

The news of these disturbances in Maryland reached Virginia at a very critical time. The opposition to Maryland and hence to Governor Harvey, who espoused the cause of the new colony, had been steadily on the increase. Claiborne was a man of great influence in Virginia, and the charges brought against him and the order to seize his person had caused considerable indignation in that colony. Nearly all the Councillors were his staunch personal friends. The feeling of the Virginians towards the neighboring colony had become extremely bitter. Captain Thomas Young, writing from Jamestown, July 13, 1634, says—"Here it is accounted a crime almost as heinous as treason to favor, nay, almost to speak well of that colony of my Lord's, and I have observed myself a palpable kind of strangeness and distance between those of the best sort in the country which have formerly been very familiar and loving one to another, only because the one hath been suspected but to have been a well-wisher to the Plantation of Maryland."<sup>1</sup> Governor Harvey, writing to Secretary Windebank, December 16, 1634, says that he accounts the

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<sup>1</sup> Streeter Papers, Appendix, p. 291.

day when he did service to Lord Baltimore as the happiest of his life, but regrets that his authority is no longer very great, being limited by the council, almost all of whom are against him in whatever he can propose, especially if it concerns Maryland. It is the familiar talk of the Virginians, he says, "that they would rather knock their cattle on the head than sell them to Maryland." He adds that he has great cause to suspect that this faction is nourished from England, for during the past summer Captain Mathews received letters from England, upon the reading of which he "threw his hat upon the ground, scratching his head, and, in a fury stamping, cried a pox upon Maryland."<sup>1</sup>

Other causes of complaint against Harvey were that he undertook to rule without his Council, appropriated public fines to his own use, and intrigued with the Indians.<sup>2</sup> He had Claiborne turned out of office and Richard Kemp appointed Secretary in his place. The feelings of the people were greatly excited, especially in York County, where Anthony Panton, the minister at Kiskiack, gave expression to the popular indignation, roundly abusing Secretary Kemp, calling him "a jackanapes," and saying that he would shortly be turned out as Claiborne had been.<sup>3</sup> Matters came to a crisis in April, 1635.<sup>4</sup> Another cause of complaint was the tobacco monopoly and Harvey enraged the people by refusing to send the protest of the Assembly to England. A petition to the Council for a

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 29.

<sup>2</sup> Letter from Mathews to Sir John Wolstenholme, May 25, 1635.

<sup>3</sup> Robinson MS., p. 78.

<sup>4</sup> The materials, from which this account of the mutiny against Harvey is derived, are found largely in the McDonald Papers, Vol. II, pp. 163-208, in the Virginia State Library. The De Jarnette Papers and the Sainsbury Papers, in the State Library, and the Robinson and Randolph MSS. in the library of the Virginia Historical Society contain additional matter relating to Panton and his controversy with Kemp. The letters of Harvey and Mathews, giving accounts of the mutiny, are published in the Virginia Magazine of History and Biography, April, 1894. Kemp's account has never been published.

redress of grievances was circulated and the people assembled in crowds to sign it. Mathews, after relating the above mentioned causes of complaint, says that Harvey "had reduced the colony to a great strait by complying with the Marylanders so far that between them and himself all places of trade for corn were shut up from them and no means left to relieve their wants without transgressing his commands which was very dangerous for any to attempt. . . . The inhabitants also understood with indignation that the Marylanders had taken Captain Claiborne's pinnaces and men with the goods in them whereof they had made prize and shared the goods amongst them, which action of theirs Sir John Harvey upheld contrary to his Majesty's express commands."<sup>1</sup> The reference is to the seizure of the pinnace in command of Thomas Smith in the Patuxent, April 5. The news of the fight on the Pocomoke, April 23, did not reach Virginia until after the insurrection was over.

On April 27, a meeting was held at the house of William Warren at York to petition the council against Harvey, at which the chief speakers were Captain Nicholas Martian, who had formerly represented Kent Island in the Assembly, Francis Pott, a brother of Dr. John Pott the former Governor, and William English, the High Sheriff of York County. The next morning the Governor had the three arrested. When they demanded the cause of their commitment he answered that they should know at the gallows. The next day Pott was examined before the Council in regard to the petition he had circulated. He said that "if he had offended he did appeal to the King for he was sure of no justice from Sir John Harvey." Upon this he was again committed and the Council adjourned for that night. When they convened again the next day, the Governor, walking up and down the room in an excited manner, demanded that martial law should be executed against the prisoners. The Council insisted that

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<sup>1</sup> Letter from Mathews to Sir John Wolstenholme, May 25, 1635.

they should have a legal trial. The Governor then asked the Council if they had knowledge of the petition, or of the people's grievances. George Minifie replied that the chief grievance was the detaining of the letters of the Assembly to his Majesty. Whereupon Harvey, rising in a great rage, struck him a severe blow on the shoulder, saying, "I arrest you upon suspicion of treason to his Majesty." Then Captain Utie, who was nearby, laid hands on the Governor, saying, "And we the like to you, Sir!" Samuel Mathews, afterwards Governor, then took Harvey in his arms and compelled him to be seated. While the Governor was struggling with Mathews and Utie, Dr. John Pott, brother of one of the prisoners, cautioning Harvey's servants not to interfere, waved his hand and 50 musketeers surrounded the house. As soon as the excitement had cooled down, Mathews told the Governor that the people's anger was beyond control unless he would consent to go to England to answer the complaints against him. At first Harvey would not hear to this, but finally agreed that if they would draw up their propositions in writing he would consider the matter. Two days later, finding that the insurrection was not confined to York County, but extended over the entire colony, he resolved to go to England, and signified his intention to the Council upon these conditions: (1) that they would select one of the Council, whom he should nominate, Governor until the King's pleasure should be known; (2) that they would swear upon the Holy Evangelists to offer no hostility to those of Maryland; and (3) that Captain Mathews, Captain Peirce, and Mr. Minifie should likewise go to England. The Council would not consent to these conditions and Harvey was forced to yield the point. A proclamation was then published in the name of the Council, stating that Harvey would go to England and commanding all persons to disperse to their several homes. The Council then set at liberty the three prisoners, and after issuing a call for an Assembly adjourned. The Assembly met May 7, 1635, and, in conjunction with the Council, elected Captain John West of Kiskiack, a brother



of Lord Delaware, Governor, until the King's pleasure should be known. Harvey was sent to England in the custody of Francis Pott, his late prisoner, and Thomas Harwood representatives of the Assembly.

This action of the Virginians in deposing his Majesty's representative was nothing more nor less than open rebellion, and Charles declared that Harvey should be sent back, "though he stay but a day."<sup>1</sup> Mathews, West, Utie, Peirce, and other leaders of the insurrection were summoned to stand trial in England, while Harvey and Kemp wreaked their vengeance on Panton, the minister at Kiskiack, who had remained in the colony. His goods were confiscated and he was banished from the colony for "mutinous, rebellious and riotous actions." But in the end the popular cause triumphed. In 1639, Harvey was removed from office, and Sir Francis Wyatt, who had before served the colony as Governor with great credit, succeeded him. Kemp retained his office of Secretary through the influence of Lord Baltimore. The sentence against Panton was reversed and the leaders of the insurrection were restored to their estates, which had been confiscated by Harvey.<sup>2</sup>

When Harvey was sent to England in 1635, he said, speaking of the conduct of the Virginians, "it is to be feared that they intend no less than the subjection of Maryland, for whilst I was aboard the ship and ready to depart the colony, there arrived Captain William Claiborne from the Isle of Kent, with the news of an hostile encounter 'twixt some of his people and those of Maryland."<sup>3</sup> The new government, however, did

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<sup>1</sup> Sainsbury Papers, Vol. III, p. 137.

<sup>2</sup> Sainsbury Papers.

NOTE.—To show how imperfectly the affairs of this period of Virginia history have been understood, Burk, who denounces Claiborne in strong terms, censures Harvey for not delivering him up to the Maryland authorities, when, as a matter of fact, Harvey was himself under arrest for the very reason that he had taken sides with Baltimore against Claiborne. See Burk, *History of Virginia*, II, p. 40.

<sup>3</sup> Maryland Archives, Council Proceedings, I, 38.

not undertake the reduction of Maryland, but recognized and attempted to uphold Claiborne's claims in a peaceable way. West, the acting Governor, writing to the Commissioners of Plantations in March, 1636, says: "Without infringing his Majesty's grant to the Lord Baltimore, we have taken the nearest course for avoiding of further unnatural broils between them of Maryland, and those of the Isle of Kent. As we find those of Maryland in our limits we bind them in deep bonds, to keep the King's peace towards those of the Isle of Kent, as also Captain Claiborne the Commander of the Isle of Kent towards those of Maryland."<sup>1</sup>

In view of the unsettled state of affairs in Virginia and of the probability of the appointment of a new governor, Lord Baltimore made an attempt, early in the year 1637, to have himself appointed Governor of Virginia. He did not make the proposition openly but approached his Majesty through the mediation and influence of his friend Secretary Windebank. He offered to undertake to increase his Majesty's revenue from Virginia £8000 yearly, and to do this without imposing any additional taxes or duties.<sup>2</sup> Whether or not he thought that his appointment would have such a pacifying effect upon the Virginians, and so promote the general prosperity of the colony, as to increase the King's revenue to the extent of £8000, is not recorded. It is possible that he may have regarded this as the only solution of the Claiborne difficulty. However this may be, he did not receive the appointment, and we do not know that his Majesty ever considered the proposition.

Meanwhile, there seems to have been no serious trouble between the Kent Islanders and the inhabitants of St. Mary's until December, 1637, when the island was surrendered to the Maryland authorities through the treachery of George

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 40.

<sup>2</sup> *Ibid.*, I, 41-42.

Evelin.<sup>1</sup> Evelin was sent over by Cloberry and Company in the fall of 1636, to look after their interests on Kent Island. Since the settlement of Maryland they had almost entirely neglected Claiborne,<sup>2</sup> fearing to risk any more capital in the venture, while their title to the island was in dispute. Claiborne carried on the trade as best he could by means of his own servants and resources. The disturbances which had arisen between him and the settlement at St. Mary's had greatly interfered with the trade and curtailed the profits therefrom. Cloberry and Company seem to have become dissatisfied with the condition of things and sent over Evelin to look after their interests. He arrived at Kent Island in December, 1636. At first Evelin either was or pretended to be an ardent supporter of Claiborne's claims to the island, and asserted boldly in the presence of the inhabitants that the King's commission to Claiborne and his subsequent letter in confirmation thereof were firm and strong against the Maryland patent.<sup>3</sup> He even went so far as to use abusive language in reference to the Calvert family, saying that Leonard Calvert's grandfather had been but a grazier, while he himself was a dunce and blockhead at school. By such means he won the confidence of the people and probably of Claiborne himself. In February, 1637, a supply of servants and goods arrived from Cloberry and Company, consigned to Evelin instead of to Claiborne, and with them a power of attorney for Evelin, and instructions to Claiborne requiring him to assign to Evelin the control of the servants, goods, and all property belonging to the joint stock, and to come to England in order to explain his proceedings and adjust his accounts. He was also directed to take an accurate inventory of their property and to require

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<sup>1</sup> The materials for this account of the surrender of Kent Island are drawn from certain depositions taken in Virginia, in May, 1640, in the case of Claiborne vs. Cloberry *et al.*, obtained from the English State Paper Office, and published in the Maryland Archives, Council Proceedings, II, pp. 181-239.

<sup>2</sup> Maryland Archives, Council Proceedings, II, 193.

<sup>3</sup> *Ibid.*, II, 215.

of Evelin a bond for its safe keeping. Accordingly in May, 1637, a few days before his departure for England, he offered, in the presence of the freemen and servants of the island, to surrender entire possession to Evelin, if he would give bond to the amount of £3000 not to alienate the island to the Marylanders, and not to carry away any of the servants. This Evelin refused to do, saying that he wanted no assignment from Claiborne and would take possession whether he would or not.<sup>1</sup> After a second attempt to get a bond from Evelin, Claiborne under protest left him in possession of the settlement and sailed for England.

Now that Evelin was in full possession of the island he developed his plans very rapidly. Whatever his original intention, he now determined to unite his fortunes with the settlement at St. Mary's, and to effect the reduction of the island to the authority of Lord Baltimore. To this end he opened negotiations with Leonard Calvert, and instead of attending to the business of Clobery and Company occupied his time with visits to St. Mary's. But the subjection of the island was a far more difficult task than he had anticipated. He tried in vain to persuade the inhabitants to renounce their allegiance to Claiborne and to submit to the jurisdiction of Lord Baltimore. They could not be moved. Finally despairing of accomplishing his end by peaceful measures, he endeavored to persuade Leonard Calvert to reduce the island by force. Calvert was for some time reluctant to resort to force, but the importunity of Evelin at last prevailed over his scruples, and in December, 1637, he led an armed expedition of about 40 men by night against the island, captured the fort, and succeeded in reducing the inhabitants to submission. Evelin was appointed Commander of Kent Island by a Commission dated December 30, 1637. Thomas Smith and John Boteler, two of the principal men on the island, were arrested and taken prisoners to St. Mary's.

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 215-216.

Warrants were soon issued for the arrest of a large number of persons on the island, either on pretence of answering a suit of Clobery and Company for debt, or on charges of sedition, piracy, and murder. These proceedings provoked an outbreak, and in February, 1638, while the Assembly was in session at St. Mary's, Calvert found it necessary to lead a second expedition against the island. After some days he succeeded in again reducing it to his authority. In return for his services Evelin was made "Lord of the Manor of Evelinton" near St. Mary's. Now that his object was accomplished he paid no further attention to Kent Island, but retired to his manor, taking with him a number of servants and other property belonging to Clobery and Claiborne, and even digging up the fruit trees in Claiborne's garden and transporting them to Maryland.<sup>1</sup> Clobery and Company had reason to regret the confidence they had reposed in Evelin. The reduction of the island was in no way authorized by them and they continued to unite their petitions with Claiborne against Lord Baltimore.

Upon the return of Governor Calvert from Kent Island, the Assembly proceeded to try Thomas Smith, who had commanded Claiborne's vessel in one of the encounters on the Pocomoke, on an indictment for murder and piracy. As there were no legally organized courts, the Proprietary having vetoed all previous acts of the Assembly, Smith was tried before the bar of the House, Secretary Lewger acting as prosecuting attorney. He was found guilty with only one dissenting voice and sentenced to be hanged. It has been stated that this sentence was never executed, as there is no official record of it. But in the depositions in the case of Claiborne vs. Clobery *et al.*, before alluded to, it is distinctly stated that he was hanged,<sup>2</sup> together with Edward Beckler, another adherent of Claiborne's.

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 196 and 211.

<sup>2</sup> *Ibid.*, II, 187.

The same Assembly, March, 1638, passed a bill of attainder against William Claiborne, declaring him guilty of piracy and murder and "that he forfeit to the Lord Proprietary all his lands and tenements which he was seized of on the 23rd day of April, 1635."<sup>1</sup> In pursuance of this act the property of Claiborne on Kent and Palmer's Islands was attached and appropriated to the use of the Lord Proprietary.<sup>2</sup> In view of the fact that the acts of this Assembly were vetoed by Lord Baltimore it would be interesting to know by what legal right Claiborne's property was confiscated.

A few days after the passage of this bill of attainder against Claiborne, the Lords Commissioners of Plantations, to whom the various petitions of Claiborne and Lord Baltimore had been referred, delivered their opinion, April 4, 1638, declaring the right and title to the Isle of Kent and other places in question to be absolutely belonging to Lord Baltimore.<sup>3</sup>

A few months before this decision the King had ordered the Commissioners not to allow any patents, commissions, or letters, in any way prejudicial to Lord Baltimore, to pass the seal.<sup>4</sup> The decision was given without reference to the claims of Virginia, or to Claiborne's plea that he was a member of that colony. Lord Baltimore had a charter from the King, and Claiborne had only a trading license under the seal of Scotland. Chalmers says: "The principle of this decision strikes deep into the validity of the patents of Nova Scotia, passed under the great seal of Scotland in 1621-25; because the privy Council allowed no force to a license under the privy signet of that kingdom when pleaded against a grant under the great seal of England. Yet, it is to be lamented, that similar adjudications have not been at all times perfectly uniform, and with a spirit of inconsistency which equity

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<sup>1</sup> Maryland Archives, Proceedings of the Assembly, I, p. 23.

<sup>2</sup> Maryland Archives, Council Proceedings, I, 76.

<sup>3</sup> *Ibid.*, I, 71.

<sup>4</sup> *Ibid.*, I, 55.

reprobates, different men have received different measures of justice."<sup>1</sup>

In a similar dispute, some fifty years later, between Lord Baltimore and William Penn, the Commissioners of Plantations went back on the principle of this decision of 1638. In the decision of 1685, by which half of the Delaware Peninsula was adjudged to Penn, they declared "that the land intended to be granted by the Lord Baltimore's Patent was only land *uncultivated and inhabited by savages*, and that this tract of land now in dispute was inhabited and planted by *Christians* at and before the date of the Lord Baltimore's Patent."<sup>2</sup>

Clobery and Company made one more effort. On the 28th of June, 1638, more than two months after the decision, they addressed the following complaint to Secretary Coke: "The many wrongs and oppressions which we suffer from Lord Baltimore's people in Maryland, who have lately with armed men coming in the night surprised our plantation, removed our servants, and wholly ruined what we had there, enforceth us to renew our complaint to his Sacred Majesty."<sup>3</sup> On the 14th of July, the King wrote to Lord Baltimore, stating that he had referred to the Commissioners the examination of the truth of these complaints and requiring him to "perform what our former general letter did enjoin and that the above named planters and their agents, may enjoy in the meantime their possessions, and be safe in their persons and goods there, without disturbance or further trouble by you or any of yours till that cause be decided."<sup>4</sup> On the 21st of July, David Morehead delivered this letter to Lord Baltimore in the presence of George Fletcher, Thomas Bullon, Captain William Claiborne, and William Bennett, and demanded an answer, so that instructions might be sent to his deputies by the ships about to sail, according to the tenor of his Majesty's

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<sup>1</sup> *Annals*, 212.

<sup>2</sup> Maryland Archives, Council Proceedings, II, 455.

<sup>3</sup> *Ibid.*, I, 77.

<sup>4</sup> *Ibid.*, I, 78.

letter. Baltimore refused to give an answer, saying that he would wait upon his Majesty and give him satisfaction therein.<sup>1</sup>

After the decision of 1638, Claiborne, having given up all hope of obtaining a redress of grievances in England, returned to Virginia, and endeavored to recover his personal property from the Maryland government. To this end, as it would have been rather unsafe for him to venture into Maryland himself, in view of the act of attainder passed against him two years before, he gave a power of attorney to George Scovell, August 21, 1640. To Scovell's petition the Governor and Council replied, that whatever estate Captain Claiborne left in that province at his departure in March, 1637, was possessed by right of forfeiture to the Lord Proprietary for certain crimes of piracy and murder. If the petitioner could find out any of the said estate not held by that right he would do well to inform his Lordship's attorney of it that it might be recovered to his Lordship's use.<sup>2</sup>

Claiborne seems to have given up all idea of recovering his possessions in Maryland, and to have settled down quietly in Virginia. In 1642, Charles I appointed him Treasurer of Virginia for life.<sup>3</sup> This was an attempt no doubt to conciliate him for the losses he had suffered in Maryland.

In the year 1644, while the civil war was raging in England, Claiborne, who had all along been closely identified with Samuel Mathews and the democratic element in the colony, determined to cast in his lot with the Parliamentary party, and renewed his claims to Kent Island, in the hope that they would be recognized now that the Protestant party was in power. Accordingly during the temporary absence of Governor Berkeley in England, he regained possession of Kent Island, the inhabitants of which were glad to welcome him back. Very little is known of his proceedings at this time,

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<sup>1</sup> Maryland Archives, Council Proceedings, II, 174.

<sup>2</sup> *Ibid.*, I, 92-93.

<sup>3</sup> Hazard, *Collection of State Papers*, I, 493.



but the fact of his having acquired control of the island is established beyond doubt.<sup>1</sup>

About the same time Richard Ingle, also a Parliamentary, took St. Mary's, the seat of government, and forced Governor Calvert to flee for safety into Virginia. There is no evidence of any agreement between Ingle and Claiborne, although it is possible that there was a tacit understanding. They kept control of Maryland for about two years. Towards the close of the year 1646, Calvert collected his scattered forces and with the assistance of Governor Berkeley, who had now returned from England, succeeded in recovering the lost province. Baltimore had the year before given up all hope of retaining Maryland and had directed his brother Leonard to gather together whatever personal property he could and make his escape. But Leonard thought differently, and subsequently Lord Baltimore himself turned Parliamentary and thus saved his possessions.

## II.

### THE RISE OF THE PURITANS IN VIRGINIA AND THEIR EXPULSION UNDER GOVERNOR BERKELEY.

The first portion of this paper has been occupied with events of a political nature. It is now necessary to consider the policy of the two colonies in regard to religious matters, especially their treatment of the Puritans and the causes which led to the expulsion of a large number of them from Virginia and their settlement in Maryland.

The religious element did not enter into the settlement of the southern colonies in as marked a degree as it did into the settlement of New England. Religion, however, was to the men of the seventeenth century very much a matter of course. The whole English nation, Cavalier and Puritan alike, clothed their thoughts in the language of Scripture in a way which to

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<sup>1</sup> Maryland Archives, Provincial Court Proceedings, I, 281, 435, 458-459.

us at the present day seems the veriest cant. Hence in the earliest charters of Virginia, although the enterprise was at first purely commercial, we find the strongest expression of religious sentiments and purposes, and a clergyman of the Established Church accompanied the first colony to Jamestown. The Anglican Church thus became established in Virginia and throughout the colonial era that colony was the stronghold of episcopacy in this country. But it was episcopacy of a modified type. The American branch of the English Church occupied quite an anomalous position. It presented the paradox of an episcopal church without an episcopate. No Anglican bishop ever set foot upon the shores of America prior to the Revolution, and the Bishop of London, whose jurisdiction over Virginia was recognized in a measure from the first by virtue of the residence of the London Company within his diocese, was not even represented by a commissary until 1689. In that year the Rev. James Blair was sent out with formal authority to act as commissary, and from that time forward some of the less important functions of the office of bishop were exercised by a representative. It is hardly necessary to add that throughout the colonial period the rites of ordination and confirmation were not performed in the colonies.<sup>1</sup> The vestries claimed the right of presentation and the Governor the right of induction, but as a matter of fact induction rarely ever took place. It became customary for the vestries to hire their ministers from year to year without presenting them to the Governor.<sup>2</sup> Thus church government in Virginia, while theoretically episcopal, was practically congregational.

To the uncertainty of tenure was added another circumstance, which was more or less of an obstacle in the way of ministers coming to the colony. This was the fact that salaries

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<sup>1</sup> Hawks, *Ecclesiastical Contributions*, I, 73.

<sup>2</sup> Campbell, *History of Virginia*, 278, also Bishop Perry's *Collection of Papers*, 261, ff.

were paid in tobacco, the amount in pounds being fixed by statute. The bad quality of the tobacco in certain parishes left them almost entirely without the ministrations of the Established Church.<sup>1</sup> This condition of affairs, added to the practical independence of the vestries, favored the growth of dissenters, and it is a striking fact that the Puritans and afterwards the Quakers congregated in those parishes where the bad quality of the tobacco did not favor the growth of the Established Church.

The governors showed their loyalty to the establishment by requiring the Assemblies to pass, at the beginning of each session, a body of statutes enjoining strict conformity to the rights and ordinances of the Church of England. These acts, which became especially strict from Harvey's time on, were largely formal. They were a re-echo of those passed in England under the influence of Archbishop Laud, and were intended, no doubt, to catch the eye of that zealous and all-powerful prelate, but there was no Laud in this country to secure their enforcement, so they were largely deprived of their severity.

As regards the matter of religious toleration a comparison with the mother country and the New England colonies is decidedly favorable to Virginia. There is no record of the infliction of the death penalty in Virginia for reasons of a spiritual nature.

Such being the organization of the established church in Virginia, it is not strange that Puritans found a refuge there from the persecution that was directed against them in England.

About three years after the congregation of dissenters, who were to become famous as the Pilgrim Fathers, left England to seek in Holland a refuge from religious persecution, another little band of Puritans passed silently and unobserved to the new world. They were not separatists like those who went to

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<sup>1</sup> Hugh Jones, *Present State of Virginia*, 106; Col. Byrd's Diary, 42.

Holland, but they escaped from their native land to avoid the same persecution. They reached Virginia on the 10th of May, 1611, in company with other colonists sent out by the London Company under the command of Sir Thomas Dale, who had just been appointed High Marshall of Virginia. Dale succeeded Lord Delaware, who had been compelled by ill health to leave the colony two months before. He was not commissioned as Governor, but was to act as such until the arrival of Sir Thomas Gates. Prior to coming to Virginia, Dale had served in the Netherlands as captain of an English company in the service of the States General. He was granted a leave of absence for three years in order to come to Virginia.<sup>1</sup> He was thus an experienced soldier and it was no doubt for this reason that he was appointed High Marshall.

As soon as Gates arrived Dale left Jamestown, accompanied by about 350 men, some of whom were Puritans and others Dutch laborers, and proceeded up the James to form a new settlement, named by him Henricopolis (contracted into Henrico) in honor of Henry, Prince of Wales. This was the second settlement made in Virginia. He selected for the site of his town a peninsula about 12 miles below the present city of Richmond. The river at this point makes a remarkable bend, and after flowing in a circuit of seven miles, returns to a point within 120 yards of the place of deviation. A place admirably adapted for defense against the Indians, Dale's city had three streets of well-framed houses, a handsome church, and the foundations of another to be built of brick, besides store-houses and watch-houses. On the opposite side of the river was a tract of land secured by forts and a palisade about two miles and a half in length. This tract was known as Hope-in-Faith, and the forts which defended it were called Fort Charity, Fort Elizabeth, Fort Patience, and Mount Malady, the last being used also as a hospital.<sup>2</sup> These names

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<sup>1</sup> Brown, *Genesis of the U. S.*, 446.

<sup>2</sup> Stith, 124. Hamor's Narrative in Smith's *General History*.

in themselves are suggestive of the Puritan origin of the settlers.

Dale was accompanied by Rev. Alexander Whitaker, gratefully remembered as the apostle of Virginia. He was a son of the distinguished Puritan divine, Dr. William Whitaker, Master of St. John's College and Regius Professor of Divinity in the University of Cambridge.<sup>1</sup> Dr. Whitaker distinguished himself by controversial writings against the Church of Rome and took a leading part in framing the Lambeth Articles, which were strongly Calvinistic.<sup>2</sup> At the time that Whitaker the younger decided to go to Virginia, he was a graduate of Cambridge of five or six years standing, and in possession of a comfortable living in the north of England. "Without any persuasion, but God's and his own heart, he did voluntarily leave his warm nest; and, to the wonder of his kindred and amazement of them that knew him, undertook this hard but heroical resolution to go to Virginia, and to help to bear the name of God unto the Gentiles."<sup>3</sup>

In 1613 Whitaker went back to Jamestown with Dale, who was again placed in command of the colony by the return of Gates to England. One of his letters, dated Jamestown, June, 1614, to a cousin in London, is very remarkable and throws considerable light on the condition of the church in the colony. He says: "But I much more muse that so few of our English ministers, that were so hot against the surplis and subscription, come hither, where neither is spoken of."<sup>4</sup> Whitaker was drowned in the James River in the Spring of 1617, under circumstances which have not come down to us.

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<sup>1</sup> Purchas, IV, 1770.    <sup>2</sup> Anderson, *History of the Colonial Church*, I, 135.

<sup>3</sup> Crashaw, Introduction to Whitaker's *Good Newes from Virginia*.

<sup>4</sup> Purchas, IV, 1771.

In 1613 Pocahontas married John Rolfe, and Whitaker was called upon to instruct her in the principles of the Christian religion, and to officiate at her baptism and marriage. In the celebrated painting of the baptism in the rotunda of the Capitol at Washington, he is represented as clothed in the surplice which he himself tells us was not in use in Virginia.

The years 1619–20–21, brought large accessions to the population of the colony, due to the liberal policy of the Company under the intelligent management of Sir Edwin Sandys and the Earl of Southampton. In 1619 the English separatists, who were then in Holland, obtained from the London Company, through the influence of Sandys, a patent authorizing them to settle in Virginia. They embarked in the *Mayflower* in 1620 and directed their course toward the mouth of the Hudson, then a part of Virginia. A storm, however, drove them out of their course and carried them to the north beyond the limits of the London Company's territory. The incident is interesting as illustrating the policy of the Company at this time. When a few years later the King was preparing to dissolve the Company and evidence was being collected against prominent members, it was charged against Sandys that he had intended to establish a free popular state of Brownists and separatists in Virginia with himself and his friends at its head.<sup>1</sup> Sandys, of course, never entertained any such idea as this, but he did undoubtedly encourage the emigration of Puritans to Virginia.

About this time two Puritan settlements were begun in the colony, which were destined to have a considerable influence upon the future history of both Virginia and Maryland.

The first, in Warrosquoyacke Shire, now Isle of Wight County, was commenced in 1619 by Captain Christopher Lawne on a creek which still bears his name. Lawne was a member of the first Assembly which met at Jamestown, June, 1619. He died the next year and his patent was renewed to his associates. The name of the plantation was changed to Isle of Wight, from which the county afterwards took its name.<sup>2</sup>

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<sup>1</sup> Appendix to 8th Report of Royal Commission on Historical MSS., Parts II and III, p. 45.

<sup>2</sup> Records of the London Company.

In 1621 Edward Bennett, a wealthy merchant of London, settled a colony of Puritans on Lawne's Creek. Bennett's name occurs as Deputy-Governor of the Merchant Adventurers resident at Delft,<sup>1</sup> where so many English Puritans flocked that it became almost a second London. At a general court, held November 1621, the London Company confirmed a patent to Edward Bennett for having planted 200 persons in Virginia.<sup>2</sup> At this time 50 acres of land were allowed for every person transported to the colony. Bennett himself did not come to Virginia, but placed the plantation in charge of his nephews, Robert and Richard Bennett, the latter of whom was subsequently governor of Virginia. William Bennett, another relative, was the first preacher in charge of the settlement.

This plantation received a severe blow from the Indian massacre of March, 1622. More than 50 were killed. During the next year 26 of those who survived the massacre died, leaving according to a census taken in February, 1624, 29 whites and 4 negroes.<sup>3</sup> The settlement prospered, however, in spite of these heavy losses.

In January 1622, Captain Nathaniel Basse settled at Basse's Choice, in Warrosquoyacke, not far from the Bennett plantation. He received patents for transporting 100 persons.<sup>4</sup> Basse had been associated with Lawne in 1619. In March 1632 he was commissioned by Governor Harvey to invite such of the inhabitants of New England as were dissatisfied with the climate to come further South and settle on Delaware Bay.<sup>5</sup> None availed themselves of the invitation. The Puritans who settled in Virginia came direct from England, and although a number of them afterward went to New England, there is no evidence of any coming from New England to Virginia, except indeed the three preachers in 1642, whose

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<sup>1</sup> Neill, *English Colonization of America*.

<sup>2</sup> Records of the London Company.

<sup>4</sup> Records of the London Company.

<sup>3</sup> Hotten, *Lists of Emigrants*.

<sup>5</sup> Randolph MSS., Vol. III, 219.

stay was short. These Puritan settlements in Warrosquoyacke seem to have steadily increased in numbers and in 1629 they sent 4 burgesses to the assembly, among them Richard Bennett and Nathaniel Basse.<sup>1</sup>

In November 1621, Daniel Gookin arrived out of Ireland with 50 men of his own and 30 passengers, "exceedingly well furnished with all sorts of provision and cattle," and planted himself at Newport News. He is mentioned as having undertaken to transport "great multitudes of people and cattle" to Virginia, and received patents for 300 people.<sup>2</sup> After the massacre of 1622 the colonists were ordered to abandon the outlying plantations and to concentrate their forces about the stronger ones. Gookin's settlement at Newport News was one of those ordered to be abandoned, but he refused to obey the order and gathering together his dependants, who amounted in all to only 35, remained at his post, "to his great credit and the content of his adventurers."<sup>3</sup>

In 1637 Gookin received a grant of 2,500 acres in Upper Norfolk, now Nansemond County, and in 1642 he was appointed commander of the county. He and his son, who accompanied him, were both natives of Kent County, England, though they had traded in Ireland. They were Puritans and closely associated with the Bennett settlement in the adjoining county.

The Puritans seem to have encountered not the slightest opposition on account of their religious views until the arrival of Governor Berkeley in 1642. The administration of Sir William Berkeley, one of the best known and most distinguished characters of the colonial period, marks a new epoch in Virginia history. For more than thirty years he was the most conspicuous figure in the affairs of the colony, and that too during a period marked by events of a most striking and unusual character. He was a perfect type of the Cavalier,

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<sup>1</sup> Hening, I, 139.

<sup>2</sup> Records of the London Company.

<sup>3</sup> Stith, 235.



narrow-minded, hot-headed, out-spoken, and withal very zealous in his support of the Established Church. He once expressed the wish that the ministers in the colony would pray oftener and preach less, and added: "But I thank God there are no free schools, nor printing, and I hope we shall not have them these hundred years." The political principles and religious tenets of the Puritans were equally offensive to him, and he soon found occasion for displaying his hostility towards them. This was afforded by the presence in Virginia of three congregational preachers from New England.

We have before alluded to the fact that the bad quality of the tobacco in certain parts of the colony did not favor the growth of the Established Church. This was especially the case in Nansemond County, where the Puritans were congregated. Rev. Hugh Jones, writing in 1724, says: "Some parishes are long vacant upon account of the badness of the tobacco, which gives room for dissenters, especially Quakers, as in Nansemond County."<sup>1</sup> Colonel Byrd in his Diary, written in 1728, confirms this statement. "We passed by no less than two Quaker meeting houses, one of which had an awkward ornament on the west end of it, that seemed to ape a steeple. I must own I expected no such piece of foppery, from a sect of so much outside simplicity. That persuasion prevails much in the lower end of Nansemond County, for want of ministers to pilot the people a decenter way to Heaven. The ill reputation of the tobacco in those lower parishes makes the clergy unwilling to accept of them, unless it be such whose abilities are as mean as their pay. Thus, whether the churches be quite void or but indifferently filled, the Quakers will have an opportunity of gaining proselytes. 'Tis a wonder no Popish missionaries are sent from Maryland to labor in this neglected vineyard, who we know have zeal enough to traverse sea and land on the meritorious errand of making converts. Nor is

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<sup>1</sup> Present State of Virginia, 106.

it less strange that some wolf in sheep's clothing arrives not from New England to lead astray a flock that has no shepherd."<sup>1</sup> This last sentence is rather strange, for Colonel Byrd probably knew nothing of the missionary efforts of the New England preachers nearly a century before. These passages were, of course, written at a much later period than the one under consideration, when the Quakers were quite numerous in that section of the colony, but they are of great interest as showing that the Church of England had never been well established there.

Whatever the cause it is quite certain that at the time of Governor Berkeley's arrival in Virginia the parishes of Upper Norfolk, or Nansemond as it was afterwards called, were vacant, and the inhabitants being more religiously inclined than most of the Virginians of that day, decided to appeal to their brethren in New England for aid. During the summer of 1642 Philip Bennett was dispatched with letters to the elders at Boston. He arrived there safely in a small pinnace, while the General Court was in session. The letters were read publicly in Boston on a "Lecture Day." They were signed by Richard Bennett, afterwards Governor, Daniel Gookin, John Hill, and others, 71 in all, and dated 24th of May, "from Upper Norfolk in Virginia." They bewailed their "sad condition for the want of the means of salvation," and earnestly entreated a "supply of faithful ministers, whom upon experience of their gifts and godliness they might call to office." After a day spent in special prayer the elders decided to respond to the appeal and selected three ministers. Those who consented to go were John Knowles of Watertown, William Thompson of Braintree, and Thomas James of New Haven. The General Court was made acquainted with the decision of the elders, which it approved, and on the 8th of

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<sup>1</sup> Colonel William Byrd, *History of the Dividing Line between Virginia and North Carolina*, p. 42.

September, the Governor was ordered to commend the ministers to the Governor and Council of Virginia.<sup>1</sup>

The voyage proved a difficult one. They were wrecked off Hellgate and the Dutch Governor gave them "slender entertainment," but Isaac Allerton of New Haven, who happened to be there, provided them with a new pinnace and they were enabled to continue their voyage. After encountering "much foul weather" they reached Virginia eleven weeks after leaving Narragansett. Winthrop says that the dangers and difficulties which continually beset them made them seriously doubt whether they were called of God or not, but they were kindly received in Virginia, not by the Governor, "but by some well-disposed people who desired their company."

The letters commending them to Governor Berkeley might as well have been left behind, for at the first meeting of the Assembly, March 1643, the following act was directed against them. "For the preservation of the purity of doctrine and unity of the Church, it is enacted that all ministers whatsoever, which shall reside in the colony, are to be conformed to the orders and constitution of the Church of England, and not otherwise to be admitted to teach or preach publicly or privately, and that the Governor and Council do take care that all non-conformists, upon notice of them, shall be compelled to depart the colony with all convenience."<sup>2</sup>

Governor Berkeley issued a proclamation in accordance with this act which effectually silenced the Massachusetts preachers and compelled them to leave the colony. James and Knowles were the first to go. Knowles reached Boston the latter part of April. He reported that their efforts had been attended with great success, and that "though the State did silence the ministers, because they would not conform to the order of England, yet the people resorted to them in private houses to hear them as before." Thompson was the last to leave.

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<sup>1</sup> Winthrop's *Journal*, Mather's *Magnalia*, and Johnson's *Wonder-working Providence*.

<sup>2</sup> Hening, I, 277.

Cotton Mather chronicles the success in Virginia in a quaint poem, one stanza of which is as follows :

" A constellation of great converts there  
Shone round him, and his heavenly glory were ;  
Gookin was one of them ; by Thompson's pains,  
Christ and New England a dear Gookin gains."

The reference is to Daniel Gookin, Jr., whose father was the head of the Puritan settlement in Nansemond. Young Gookin, thus converted under Thompson's preaching, left Virginia the following year, and went to New England, where he soon became a man of prominence.<sup>1</sup>

On the 17th of April, 1644, about a year after the expulsion of the New England ministers, occurred the second great massacre in the history of Virginia. The Indians, taking advantage of the disorder occasioned by the civil war in England, determined upon a general and concerted massacre of the whites. It is intimated by some historians that they were incited to this act by certain parties who were dissatisfied with Berkeley's rule, presumably the Puritans, but there is no foundation for such a suggestion. The Governor had set apart Good Friday, April 18, as a special day of prayer for the success of the King's party. Just on the eve of this fast-day the Indians made their attack, which was entirely unexpected, and about 300 colonists were killed. Winthrop remarks that it is very observable that this calamity befell the Virginians shortly after they had driven out the godly ministers from New England.

Lord Baltimore, in view of these troubles and of the attitude of the Virginia government towards dissenters, made known through Captain Edward Gibbons, a Boston merchant

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<sup>1</sup> Gookin resided at Cambridge and represented that town in the General Court. In 1651 he was Speaker of the House of Deputies, and for more than 30 years he was Superintendent of Indian Affairs, with the title of Major-General. He died March 19, 1687, aged 75. He was the author of a history of the Indians.

who traded with the southern colonies, that any nonconformists would be welcomed in Maryland and guaranteed religious freedom. It is not probable that any availed themselves of the invitation at this time.

One of the most remarkable results of the massacre, if we may give full credence to the accounts that have come down to us, was the spiritual change which it wrought in Rev. Thomas Harrison, Governor Berkeley's chaplain. "After this visitation of Providence he became quite another man." He expressed his regret "with sorrow and concern" that, while he had openly encouraged the New England preachers, he had secretly used his influence with the Governor against them. But the Governor became "the more hardened and dismissed his chaplain, who was now grown too serious for him."<sup>1</sup> Upon this Harrison crossed over the James and took the place of the preachers he had helped to expel in ministering to the spiritual wants of the Nansemond Puritans. The Governor issued special orders against his refractory chaplain, and as a last resort swore at him, but all in vain. Harrison could not be turned aside from his purpose and he continued to preach to the people.

Just at this time Berkeley was called to England, where the civil war was at its height. When he returned to Virginia after a year's absence he found that colony on the verge of a revolution. Mathews and Claiborne had declared for Parliament. Claiborne and Ingle were in possession of Maryland, and Governor Calvert was a fugitive in Virginia. After assisting Calvert to regain his lost province, Berkeley once more turned his attention to Harrison and the Puritan settlement south of the James.

On the 3d of November, 1647, another act was passed against nonconformists. "Upon diverse information presented to this Assembly against several ministers for their neglects

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<sup>1</sup> Calamy, *Nonconformists' Memorial*, III, 174.

and refractory refusing after warning given them to read Common Prayer or Divine Service upon Sabbath days . . . it is enacted that all ministers in their several cures throughout the colony do duly upon every Sabbath day read such prayers as are appointed and prescribed unto them by the said Book of Common Prayer."<sup>1</sup>

The Puritans had felt for some time that their position was insecure and had seriously considered the question of leaving Virginia. Several letters on this subject had passed between Harrison and Governor Winthrop of Massachusetts. Under date of November 2, 1646, from Elizabeth River, Harrison writes: "Had your propositions found us risen up, and in a posture of removing, there is weight, and worth, and force enough in them to have staked us down again." In a second letter dated Nansemond, November 14, 1647, a few days after the passage of the act above cited, he says: "74 have joined here in fellowship, 19 stand propounded, and many more of great hopes and expectations."<sup>2</sup> Evidently the act of the Assembly had not disconcerted them.

The next year, however, the Governor made another attempt to uproot this nest of dissenters. William Durand, an elder in the Nansemond church, and Richard Bennett were banished. They took refuge in Maryland. Harrison was also ordered to depart the colony by the third ship at furthest. He went to Boston to take advice of the elders there as to the best course for the Virginia Puritans to pursue. He reached there on the 20th of August, 1648, and reported that the Nansemond church had grown to 118 members and that by conjecture fully 1000 others were of like mind. He also stated that many of the Virginia Council were favorably disposed toward Puritanism.<sup>3</sup>

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<sup>1</sup> Hening, I, 341.

<sup>2</sup> Massachusetts Historical Collections, Ser. IV, Vol. VII, 434.

<sup>3</sup> Savage's *Winthrop*, II, 407.

Meanwhile the Virginia Puritans had been invited by Captain William Sayle, afterward Governor of South Carolina, to join him in a Puritan settlement which he had begun in the Bahamas. But they "being very orthodox and zealous for the truth," as Winthrop informs us, would not decide the matter without advice from New England. Winthrop advised them strongly against leaving Virginia, "seeing that God had carried on his work so graciously hitherto, and that there was so great hope of a far more plentiful harvest at hand."

Harrison returned to Virginia for a short time during the winter of 1649, but was soon in Boston again.<sup>1</sup> His congregation meanwhile petitioned the Council of State in England for his reinstatement, and on the 11th of October, 1649, an order was sent to the Governor of Virginia.

"Sir: We are informed by the petition of some of the people of the congregation of Nansemond in Virginia that they had long enjoyed the benefit of the ministry of Mr. Harrison, who is an able man and of unblamable conversation, who hath been banished by you for no other cause but for that he would not conform himself to the use of the Common Prayer Book. We know that you cannot be ignorant that the use of the Common Prayer Book is prohibited by the Parliament of England, and therefore you are hereby required to permit the same Mr. Harrison to return to his said congregation to the exercise of his ministry, unless there be sufficient cause as shall be approved of the Parliament or this Council when the same shall be represented unto us. Of your compliance herein we expect to receive an account from yourself of the first opportunity."<sup>2</sup> This letter came too late to be of any service, even if the old Cavalier Governor had been disposed to pay any attention to an order of Parliament.

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<sup>1</sup> Massachusetts Historical Collections, Ser. IV, Vol. VII, 436.

<sup>2</sup> Sainsbury Papers, 1640-1691, p. 19, in the Virginia State Library. Briggs, *American Presbyterianism*, app. VI.

By the time it reached Virginia the greater part of Harrison's congregation had moved to Maryland.<sup>1</sup>

The government of that province had been reorganized the year before on a Protestant basis. Leonard Calvert had died in June 1647, a few months after he had succeeded, with the assistance of Governor Berkeley, in reestablishing himself at St. Mary's. Upon his death bed he appointed Thomas Greene, a Catholic, to succeed him as Governor. Meanwhile Lord Baltimore, like a great many other Catholic noblemen, had turned Parliamentary, in the hope that, with the overthrow of the Royalists and the Established Church, the Catholics would receive recognition and be allowed the free exercise of their religion. His position, however, was at best insecure, and in order to make sure of his province he reorganized it by the appointment of a Protestant Governor and Secretary, with a Protestant majority in the Council.<sup>2</sup> William Stone, formerly of Northampton County in Virginia, was appointed Governor by a commission dated August 6, 1648.

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<sup>1</sup> Harrison is a most interesting character. Calamy (*Nonconformists' Memorial*, I, 330) says that Harrison was born at Kingston-upon-Hull and brought up in New England. The fact of his being Governor Berkeley's chaplain would seem to render this improbable. He was probably raised in Virginia, where there were several families of the name at an early date. After leaving Virginia he went to Boston. Here he married Dorothy Symonds, a cousin of Gov. Winthrop, and in a short time went to London, where he attained great distinction as a preacher. He did not, however, forget his old congregation, for on the 28th of July, 1652, he addressed to the Council of State a petition "on behalf of some well-affected inhabitants of Virginia and Maryland." When Henry Cromwell was appointed Lord Lieutenant of Ireland, Harrison entered his service as chaplain, and upon the death of the Lord Protector he preached a funeral sermon before a large gathering in Christ Church Cathedral, Dublin. At the Restoration he returned to England, but was soon silenced by the Act of Uniformity, upon which he went back to Dublin and exercised his ministry as a dissenter, having a "flourishing congregation and many persons of quality for his constant auditors."

<sup>2</sup> Bozman, *History of Maryland*, 333.



About this time Richard Bennett and William Durand were banished from Virginia and took refuge in Maryland. At their solicitation Governor Stone invited the Nansemond congregation to his province, and within the next year fully 300 Puritans migrated from the lower James to Maryland and settled on the Severn near the present site of Annapolis. They called their settlement Providence.<sup>1</sup> The movement did not take place all at once. A few families went during the spring and summer of 1649, and the others followed in the fall. The supremacy of the Puritan party in England had produced little effect upon Governor Berkeley, who remained a staunch Royalist to the end. It is probable that the execution of Charles I. had produced somewhat of a reaction in Virginia. The inhabitants of that colony had in the main been well treated by the Stuarts, and they were not prepared for such extreme measures as their brethren at home, who had experienced all the horrors and excitement of a long civil war. In addition to this a number of Cavaliers came to the colony about this time, one ship alone, in September 1649, bringing over as many as 330. These, of course, had great influence in shaping public sentiment. Under these circumstances Berkeley, knowing that Parliament was too much occupied for the present with domestic affairs to interfere with him, continued his persecution of the Puritans, and in October, 1649, an act was passed condemning the execution of Charles and declaring that any one, who should undertake to defend the "late traiterous proceedings" against the King, should be adjudged accessory post factum to his death.<sup>2</sup> Upon the passage of this act those Puritans who were still wavering in their decision quickly left the colony. In Maryland they were granted a large tract of land, local government, and religious freedom.

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<sup>1</sup> For the further history of this settlement see, "A Puritan Colony in Maryland," by Daniel R. Randall, *J. H. U. Studies*, 4th Series, No. VI, 1886.

<sup>2</sup> Hening, I, 359.

It had been the policy of the Maryland government, or rather of the Lord Proprietary, from the first to admit Protestant settlers on equal terms with Catholics. The credit of this toleration has been claimed by Catholics and Protestants alike. Whatever credit is due to any one is due to the Lord Proprietary, Cecilius Calvert. He, however, adhered to this policy for political and economic and not for religious reasons. It may be reasonably doubted whether the exclusion of Protestants from an English colony would have been allowed under any circumstances. At any rate he did not attempt it. Although toleration had been the policy of the government from the start, it was not guaranteed by any formal document until the appointment of Stone, the first Protestant Governor, in 1648. In the oath required of him is the following clause: "I do further swear that I will not by myself nor any person directly or indirectly trouble, molest or discountenance any person whatsoever in the said Province professing to believe in Jesus Christ and *in particular no Roman Catholic* for or in respect of his or her religion."<sup>1</sup> This principle was also embodied in the famous *Act Concerning Religion* passed by the Assembly on the 21st day of April, 1649. It tolerated only those who believed in Jesus Christ. Those who denied the divinity of Christ or the doctrine of the Trinity were to be punished with death and the forfeiture of estates. It is probable that a majority of this Assembly were Protestants.<sup>2</sup> The act, however, did not originate with the Assembly, but was passed in exactly the form in which it was submitted by the Proprietary. This Assembly was held shortly before the settlement of the Puritans at Providence, and so they had nothing to do with it. They, however, very quickly rose to political prominence. At the very next Assembly, April 1650, James Cox, one of the two burgesses sent from Providence

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 209.

<sup>2</sup> Bozman, *History of Maryland*, II, 354.

was elected Speaker. The Protestants were now decidedly in the majority, both in the Assembly and in the colony at large.

### III.

#### PURITAN SUPREMACY IN VIRGINIA AND MARYLAND.

It was not until toward the close of the year 1650 that the Parliament of England found itself sufficiently free from the more urgent demands of domestic affairs to take any steps towards settling the government of the colonies. In October 1650, an act was passed prohibiting all trade or intercourse with Virginia or the West Indies for their "divers acts of rebellion," and the Council of State was given power to send ships to any of the plantations aforesaid and "to enforce all such to obedience, as stand in opposition to the Parliament." The term Virginia was still used in a very broad and indefinite sense as applying to any of the American colonies, and the expression *Maryland in Virginia* frequently occurs in documents of this period. The fears of Lord Baltimore were very naturally aroused at the prospect of commissioners being appointed to settle the affairs of the colonies, especially as Charles II. had been proclaimed King in Maryland, as well as in Barbadoes and Virginia, although it had been done without his knowledge or approval. He now found himself in an extremely awkward position. On the one hand he had incurred the resentment of the King, because he "did visibly adhere to the rebels in England, and admitted all kinds of sectaries and ill affected persons into his plantation." For these reasons his charter was annulled, so far as Charles had power to do so, and Sir William Davenant, the poet, was appointed Royal Governor of Maryland. On the other hand he was not quite sure of his position with Parliament, and reports were being circulated in his province to the effect that the proprietary government was about to be dissolved. These reports caused such uneasiness that the Puritans of

Providence, who had taken a very prominent part in the Assembly of 1650, refused to send delegates to the one to be held in 1651, saying that they preferred to await the action of Parliament. About the same time Governor Berkeley, who no doubt was the informant of his Majesty in regard to the conduct of Lord Baltimore in admitting "all kinds of sectaries and ill affected persons into his plantation," seems to have considered that province a fit place for encroachments, now that his Majesty had recalled the charter, and authorized Edward Scarborough of Accomac County to take possession of Palmer's Island, a very desirable trading post at the mouth of the Susquehannah, formerly held by Claiborne.

Baltimore, however, was determined not to let the control of his province pass from his hands without a struggle. It required all the influence he could bring to bear upon the Council of State to prevent the name of Maryland from being inserted in the commissions about to be issued for the reduction of the colonies to the authority of Parliament. He was, however, prepared for the issue. The protection which had been extended to the Puritans, and the act of toleration passed by the Assembly in 1649, now stood him in good stead. He went before the committee with a certified declaration from the principal Protestants in his province to the effect that they enjoyed entire freedom and liberty in the exercise of their religion. The declaration was signed by the Governor and the three Protestant members of the Council, eight burgesses, and upwards of forty inhabitants of the colony.<sup>1</sup> He also disowned the act of Greene in recognition of Charles II, and adduced the evidence of several Protestant merchants to show that Maryland neither was nor had been in opposition to Parliament. The amount of political sagacity and shrewdness, which he displayed in reorganizing his province on a Protestant basis and recognizing by statute the principle of religious

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<sup>1</sup> Bozman, *History of Maryland*, II, 672, where the declaration is given in full.

toleration just as the top wave of the great Puritan revolution was carrying everything before it, is truly remarkable. He was in a measure successful; the name of Maryland was stricken out, but in the final form in which the instructions were issued a circumlocution was used which practically included it. The paragraph alluded to is as follows: "Upon your arrival at Virginia you or any two or more of you shall use your best endeavors to reduce all the plantations within the Bay of Chesopiack to their due obedience to the Parliament of the Commonwealth of England."<sup>1</sup> This, of course, by any reasonable construction would be taken to include Maryland.

The commissioners named to carry out these instructions were Captain Robert Denis, an officer in the Navy, who was put in command of the fleet, Thomas Stagge, Richard Bennett, and William Claiborne. In case of the death or absence of Captain Denis, Captain Edmund Curtis, commander of the frigate *Guinea*, was instructed to act as commissioner and take charge of the expedition. Bennett and Claiborne, who were in Virginia at the time, probably knew nothing of their appointment until the expedition arrived there.

The other commissioners embarked on board two ships, with a force of 750 men, towards the latter part of September, 1651. On the voyage out, the ship which bore Denis and Stagge with the original commission was lost. Curtis, upon whom the command now devolved, and who had a copy of the instructions, continued the voyage, touching at Barbadoes. Here he found that Sir George Ayscue, who had been sent out several months before to reduce that island, was still held in check by the inhabitants. After assisting him to force them to surrender, Captain Curtis sailed for Virginia and arrived before Jamestown early in March, 1652.

Governor Berkeley, who had learned of the approach of the frigate, had made active preparations for resistance and was no doubt sincere in his intentions. He had distributed muskets

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<sup>1</sup> Thurloe State Papers, I, 197.

among the inhabitants of Jamestown and manned some Dutch ships that happened to be in the harbor. The maritime policy of England at this time was largely directed towards breaking up the carrying trade of the Dutch, and one of the chief objects in sending the expedition against the colonies was to suppress the illicit exportation of tobacco in Dutch ships, which, in spite of all restrictions, had greatly increased during the continuance of the civil war in England. These ships were thus very willing to render their assistance to Governor Berkeley. Before carrying out such warlike measures, however, a conference was held, the Assembly was summoned, and the Virginians quietly decided to submit to the authority of the Commonwealth of England.

The articles of surrender between the commissioners of Parliament and the Assembly of Virginia were concluded and signed, March 12, 1652. The Virginians obtained the most liberal terms from the commissioners. The most important provisions were that the act of submission should be considered voluntary and not forced by conquest, that there should be full indemnity for all past acts against Parliament, that those who refused to submit should have a year in which to remove themselves and their property from the colony, and that the use of the Book of Common Prayer should be permitted for one year.<sup>1</sup> The fourth article is of special interest to us: "That Virginia shall have and enjoy the ancient bounds and limits granted by the charters of the former Kings, and that we shall seek a new charter from the Parliament to that purpose against any that have intrenched upon the rights thereof." This, of course, was a blow at Maryland. The articles were signed by Richard Bennett, William Claiborne, and Edmund Curtis.

Various attempts have been made, under the impression that the Virginians at this time were all Cavaliers, to explain this seemingly unaccountable conduct of Governor Berkeley

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<sup>1</sup> Hening, I, 363.

in surrendering the colony at the bidding of a single frigate. There is not the slightest mystery involved in the matter. The general misapprehension in regard to this surrender and the provisional government afterward established, is due to the fact that the strong Puritan element in the colony has been entirely overlooked. The more radical dissenters had, indeed, been driven out by Governor Berkeley, but there remained behind a large and influential class, who were Puritans in politics if not in religion. The Cavalier immigration, which has given such a romantic tinge to the entire colonial period, had scarcely begun at this time. Bennett was the leading spirit among the dissenters while Claiborne and Mathews, although not identified with the Puritans in religion, had all along been the leaders of the popular party, having brought about the insurrection under Governor Harvey and deposed him from office, and furthermore both had declared for Parliament in 1644. Under these circumstances it is not strange that the assembly should have forced Governor Berkeley to surrender the government into the hands of Bennett and Claiborne, and that such liberal terms were agreed upon.

After the settlement of Virginia, the commissioners proceeded to St. Mary's to require from the Maryland government the formal recognition of their authority. This was done in pursuance of the instructions given them to reduce *all the plantations within the Bay of Chesapeake* to the authority of Parliament. This clause certainly justified them in considering Maryland within the scope of their commission, whatever may have been the intention of the Council of State in England. Captains Denis and Stagge, the only two of the commissioners who had been present when the instructions were issued, were lost on the way out. Curtis, Bennett, and Claiborne had therefore received no verbal instructions, but were governed solely by the written ones. It has been stated by most of the Maryland historians that Bennett and Claiborne took advantage of the powers loosely defined in their

instructions to usurp control of the government of Maryland in order to give Claiborne an opportunity to settle his old score with Lord Baltimore. There seems no justification whatever for such an opinion. Captain Curtis, the Commander of the expedition, who had no connection with the colonies and hence no personal interests involved, interpreted the instructions as including Maryland, and it was in his ship and under his command that Bennett and Claiborne first went there. Their action was subsequently confirmed by the authorities in England.

Furthermore, Claiborne had nothing to expect in the way of support or recognition of his claims to Kent Island from the Puritans of Providence. He had never been identified with the Puritan dissenters. This is shown by the fact that the Assembly of 1650, which was largely Puritan, and of which James Cox, one of the burgesses from Providence was Speaker, passed an act prohibiting all compliance with Claiborne under penalty of death and confiscation of property.<sup>1</sup> The year before Claiborne had had some correspondence with Governor Stone in regard to Kent Island.

When they reached St. Mary's the commissioners simply required a formal submission on the part of the Governor and Council "so as that they might remain in their places conforming themselves to the laws of the Commonwealth of England in point of government only and not infringing the Lord Baltimore's just rights." In conformity with the laws of England the commissioners demanded that they should subscribe to the *engagement* "to be true and faithful to the Commonwealth of England as it is now established without King or House of Lords," and that all writs and warrants should be issued in the name of the Keepers of the Liberty of England. To the first of these demands the Governor and Council responded that they were perfectly willing to agree, but in regard to the second, as writs and warrants had always

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<sup>1</sup> Maryland Archives, Assembly Proceedings, I, 287.



been issued in the name of the Lord Proprietary and not in the King's name, they would not consent to the change. As Governor Stone persisted in his refusal to submit to these demands, and the commissioners had no power to deviate from their instructions in this particular, Stone was deprived of his commission, and by a proclamation, issued on the 29th of March, the government of the province was vested in a Council, consisting of Robert Brooke, Esq., Colonel Francis Yardley, Mr. Job Chandler, Captain Edward Windham, Mr. Richard Preston, and Lieutenant Richard Banks.<sup>1</sup> The commissioners then returned to Virginia to meet the Assembly which they had summoned before going to Maryland.

The Assembly met on the 30th of April, 1652. Bennett was elected Governor and Claiborne was restored to his old place as Secretary of State. Under the provisional government the Governor and other officers were elected by the Assembly.<sup>2</sup> Bennett was succeeded as Governor in 1655 by Edward Diggs. Diggs in turn was succeeded in 1656 by Samuel Mathews, who continued in office until his death in 1660. Claiborne continued as Secretary throughout the whole Commonwealth regime.

As soon as the affairs of the two colonies were thus satisfactorily settled, Captain Edmond Curtis returned to England with the frigate. Thus the two remaining commissioners, Bennett and Claiborne, were left in undisputed control of both colonies. Bennett was Governor of the colony from which he had so recently been expelled as a dissenter, and Claiborne, by a strange turn of fortune, found himself in virtual control of the province of his old rival, from which he had been banished years before as a traitor and convict. Both appear to have acted with singular moderation. Bennett, who more than any one else had reason for feelings of personal enmity to Berkeley, seems not to have displayed the least resentment. Berkeley was allowed to retire to his private plantation, where

<sup>1</sup> Maryland Archives, Council Proceedings, I, 275.

<sup>2</sup> Hening, I, 371.

he remained not only during the prescribed year but all through the period of the provisional government, and this in spite of the fact that he did not take the oath of allegiance to the Commonwealth. Claiborne, on the other hand, in spite of the fact that all the civil disturbances between Catholics and Protestants which followed in Maryland have been fathered upon him, appears to have had very little to do with the affairs of that province. From a careful examination of the records, it appears that he was in Maryland only twice after the reduction of that province, and upon both of those occasions in company with Bennett in the legitimate discharge of his duties as commissioner. He seems to have devoted himself to the duties of his office as secretary and to the affairs of his plantation on the Pamunkey. There is nothing whatever to show that he interfered with the affairs of Kent Island at this period. The only mention of his name in that connection occurs in a treaty negotiated with the Indians, July 5, 1652, which speaks of "the Isle of Kent and Palmer's Island which belong to Captain Claiborne." This paper was signed by Richard Bennett and four others appointed by the Governor and Council of Maryland to negotiate the treaty, and it may be that Bennett had this clause inserted as a mere assertion of Claiborne's claim. There is positive evidence, on the other hand, that the government of the island continued subordinate to the Maryland authorities.<sup>1</sup>

Towards the latter part of June, about two months after the departure of Captain Curtis, Bennett and Claiborne returned to Maryland. If they had usurped control of that province with sinister intentions through a misconstruction of powers, as has been so often stated, we would naturally expect to find them exercising their power in an arbitrary way, now that they were left without any check upon their authority. But their conduct was the very reverse. When they reached St. Mary's they found that Governor Stone, whom they had

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 290, 291.

deposed from office on their first visit, had reconsidered the matter and was now willing to accede to their demands and to agree to issue all writs in the name of the Keepers of the Liberties of England. They immediately reinstated him in his office and also reappointed Lord Baltimore's former Secretary, Thomas Hatton, by a proclamation of June 28, 1652.<sup>1</sup>

For a while affairs went on smoothly in Maryland, but towards the close of the year 1653 the relations between Stone and the Puritans of Providence became very strained. Stone imposed new oaths upon them and arbitrarily dismissed several of them from office. On the 3d of January, 1654, a petition was addressed to the commissioners by the Puritans complaining of their grievances, especially the oath, saying: "This oath we consider not agreeable to the terms on which we came hither, nor to the liberty of our consciences as Christians and free subjects of the Commonwealth of England."<sup>2</sup> To this petition Bennett and Claiborne replied by letter telling them to remain in obedience to the Commonwealth of England. On the 1st of March a second petition was presented to the commissioners, to which they returned a like reply. About the same time, Stone, in direct violation of his agreement with them, issued a proclamation saying that henceforth all writs should be issued in the name of the Lord Proprietary as formerly. He did this at the direction of Lord Baltimore. This act brought Bennett and Claiborne to Maryland once more. On the 4th of July Stone issued a proclamation in which he charged the commissioners with leading the people "into faction, sedition, and rebellion against Lord Baltimore," and prepared to resist their authority. The commissioners, at the head of a party of Puritans from Providence and Patuxent, then advanced towards St. Mary's and Stone consented to resign the government. By proclamation of July 22, 1654,

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 275.

<sup>2</sup> Virginia and Maryland, or Lord Baltimore's Case Answered, &c. Force Tracts, II, 28.

the government of the province was again vested in a Council with William Fuller at the head. The commissioners ordered an Assembly to be summoned to meet on the 20th of October, "For which Assembly all such shall be disabled to give any vote or to be elected members thereof as have borne arms in war against the Parliament or do profess the Roman Catholic religion."<sup>1</sup> This was the last act of the commissioners in Maryland. Cromwell approved their conduct in settling the civil government of Maryland by a letter dated September 26, 1655: "It seems to us by yours of the 29th of June and by the relation we received by Colonel Bennett that some mistake or scruple hath arisen concerning the sense of our letters of the 12th of January last; as if by our letters we had intimated that we would have a stop put to the proceedings of those commissioners, who were authorized to settle the civil government of Maryland, which was not at all intended by us, nor so much as proposed to us by those who made addresses to us to obtain our said letter; but our intention (as our said letter doth plainly import) was only to prevent and forbid any force or violence to be offered, by either of the plantations of Virginia or Maryland from one to the other upon the differences concerning their bounds, the said differences being then under the consideration of ourself and Council here; which for your more full satisfaction we have thought fit to signify to you."<sup>2</sup> The boundary dispute referred to was over the location of Watkins' Point.

The Puritan Assembly which met in October, 1654, passed an act concerning religion, by which toleration of the Catholic religion was withdrawn.<sup>3</sup> This act was copied almost bodily from the one passed in England shortly before.

When Lord Baltimore heard that Stone had again surrendered the government of the province, he wrote a letter to

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 311.

<sup>2</sup> Thurloe State Papers, IV, 55.

<sup>3</sup> Maryland Archives, Proceedings of the Assembly, I, 340.

him upbraiding him for his conduct and commanding him to take control of the government again. Upon this Stone gathered together his forces and marched against the Providence settlement. A battle was fought on the Severn, March 25th, 1655, in which the Puritans, under Fuller, were completely successful, and Stone and most of his followers taken prisoners.<sup>1</sup> This left the Puritans in undisputed control of the province.

In July 1656, Lord Baltimore appointed Josias Fendall Governor, but he was Governor only in name. The Puritans continued in control of the province until the agreement with Lord Baltimore, November 30th, 1657.

Meanwhile the Virginians had been using every effort, through their agent in England, Samuel Mathews, to prevent the government of Maryland from being again placed in the hands of Lord Baltimore, and even attempted to have his charter revoked. In the first instance the matter was referred by the Council of State to a Committee of the Navy, who reported on the 31st of December, 1652, favorably to the claims of Claiborne and the Virginians.<sup>2</sup> This report was never acted upon. For the next five years a very bitter paper warfare was waged between Lord Baltimore on the one hand and the agents of the colony of Virginia on the other. No new points were brought out on either side. Lord Baltimore prepared his "Reasons of State Concerning Maryland in America," an attempt to show that it was to the advantage of the Commonwealth of England that Maryland should continue a separate government from Virginia, and the agents of Virginia set forth their "Objections against Lord Baltimore's Patent, and Reasons why the Government of Maryland should not be put in his hands," claiming (1) that the Maryland charter was an infringement of the rights of the colony of

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<sup>1</sup> Bozman, *History of Maryland*, II, 524.

<sup>2</sup> *Virginia and Maryland, or Lord Baltimore's Case Answered*, etc., p. 20. Force Tracts, Vol. 2.

Virginia, (2) that it comprehended only unsettled lands, whereas Kent Island had been settled under the Virginia Government "before the name of Maryland was ever heard of," and (3) that Lord Baltimore was a Catholic and a Royalist. Numerous other documents to the same effect appeared on both sides.<sup>1</sup>

In 1655, Bennett was sent over to England to assist Mathews in his attack upon the Maryland charter. He was succeeded as Governor by Diggs. The following year Diggs was also sent to England, and Mathews was elected to succeed him. Mathews was still in England at this time and he seems to have remained there until November, 1657, when the controversy was finally concluded and Lord Baltimore allowed to assume control of his province once more.

This agreement was brought about in a rather strange way. Cromwell seems to have paid very little attention to the complaints and petitions of either party. They were all referred to the Council of State and Board of Trade, but there seemed no likelihood of a decision. The Protector was rather inclined at this time to cultivate the good will of the Catholic Peers, who were none of them very zealous Royalists. The agents of Virginia, under these circumstances, seem to have despaired of accomplishing the destruction of Lord Baltimore's proprietary rights, and to have thought it best to come to an agreement with him on the best terms they could secure for their Puritan brethren in Maryland without waiting for a decision from the Council of State. Bennett and Mathews thus ceased to act in their capacity as agents for the Virginia government, and in the negotiations which followed acted as the representatives of the Maryland Puritans. The settlement seems to have been brought about through the influence of Diggs, who acted as intermediary between the two parties in negotiating the terms. A formal paper was drawn up and signed on the 30th

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<sup>1</sup> Thurloe State Papers, V, 482-487; Hazard, *Collection of State Papers*, I, 620-630.

of November, 1657, by Lord Baltimore, on the one side, and Bennett and Mathews on the other, in the presence of Edward Diggs, and others. The terms of the settlement were as follows: (1) Lord Baltimore was not to call in question any act committed since the disturbances in the province began; (2) the people in opposition were to have patents for such land as they could claim under Lord Baltimore's conditions of plantation; and (3) Lord Baltimore promised never to give his consent to the repeal of the act of 1649, whereby all persons professing belief in Jesus Christ were allowed freedom of conscience.<sup>1</sup>

The Maryland Puritans accepted these terms and Puritan supremacy in Maryland came to an end.

There were no civil disturbances in Virginia under the provisional government. In January, 1660, Governor Mathews died. Richard Cromwell had resigned the Protectorate several months before. There was no ruler in England and no governor in Virginia. There had been a reaction in both countries and in March, 1660, two months before the Restoration in England, Governor Berkeley was called upon to undertake once more the government of the colony, this time by election of the House of Burgesses. Charles II was proclaimed King in Virginia in October, 1660,<sup>2</sup> and not before the Restoration as has been sometimes stated.

Under her Puritan Governors Virginia reached a high pitch of prosperity, and at the time of the Restoration possessed free-trade, universal suffrage and religious freedom. This prosperity, however, was short-lived. Upon the Restoration the Navigation Act was enforced, the suffrage again limited, and severe laws against dissenters enacted.

After the settlement with Lord Baltimore the Virginians seem to have become reconciled to the loss of territory involved in the Maryland grant, and the two colonies settled down into relations of cordial friendship, which have seldom been

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<sup>1</sup> Maryland Archives, Council Proceedings, I, 332.

<sup>2</sup> Hening, I, 526, f. n.

interrupted, except in a local way over boundary disputes. Claiborne was compensated to some extent for his losses in Maryland by grants of land at various times from the Virginia government, which amounted in the aggregate to more than 20,000 acres. But he never recovered from the sense of injustice received at the hands of the Maryland authorities. This is illustrated by the following incident.

In January 1677, the commissioners who had been sent over to Virginia to compose the disturbances growing out of Bacon's rebellion, wrote to his Majesty that the independent provinces of Maryland and North Carolina were very prejudicial to his Majesty's interests in Virginia, and recommended that the government of those provinces might be assumed by his Majesty.<sup>1</sup> This seems to have kindled once more a spark of hope in the breast of Claiborne, who was now approaching the close of his life, and in March, 1677, he laid his claims before the commissioners, enclosing almost all the papers relating to the controversy. At the same time the Virginia Assembly, in an address to the King, stating their grievances, urged the cause of Claiborne's petition, showing: "that the Island of Kent in Maryland, granted to, seated and planted, by Colonel Claiborne, Sen., formerly a limb and member of Virginia (as may appear by our records, they having sent delegates to this assembly, and divers other Indian proofs and evidences), is since lopt off and detained from us by Lord Baltimore."

The commissioners referred Claiborne's petition to the King, as not being within their powers to decide, since it concerned another province, and we hear nothing further of it.

Shortly after this Claiborne died in New Kent County, Virginia, where he had settled more than twenty years before, receiving a large grant of land from the Assembly on the Pamunkey River. He organized the county and named it New Kent in remembrance of his old settlement in the Chesapeake.

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<sup>1</sup> Burk, *History of Virginia*, II, 259.



While it was ordained that the interests of one man should be sacrificed to the future of a great and prosperous commonwealth, we cannot help recognizing the strength of Claiborne's claims and admiring the resolution and persistency with which he defended them. He was thoroughly convinced of the justice of his cause and received for a long time the encouragement of his King, and always the hearty approval of the Virginians. In spite of the abusive epithets that have been heaped upon him, there is no reason why the slightest stigma should attach to his personal character.

The Puritans, who played such an important part in the early history of Maryland and Virginia, seem not to have left any impression that can be directly attributed to them on the political institutions of either colony. In Virginia there was always a strong undercurrent of democracy, which cropped out more than once, notably in the insurrection under Harvey and in Bacon's rebellion nearly half a century later, but these popular movements cannot with any degree of confidence be attributed to Puritan influence. In matters of religion, on the other hand, we would naturally expect to find, in Maryland, at least, some survival of the influence of the Puritan settlers, but this nowhere appears. Their influence was probably in the course of time counteracted by the Catholics.

In Virginia it was different. The Puritans who remained after the Restoration, although not radical enough to separate from the Established Church left, nevertheless, a profound impression upon that Church. If the Cavaliers outstripped them in numbers and political power, they certainly did not in spiritual force, for a spirit of moderate Puritanism continued to dominate both the clergy and laity of the Episcopal Church and its influence has not yet been lost. Three quarters of a century after the Cavalier immigration Rev. Hugh Jones wrote: "In several respects the clergy are obliged to omit or alter some minute parts of the Liturgy, and deviate from the strict discipline and ceremonies of the church; to avoid giving offence, through custom, or else to prevent absurdi-

ties and inconsistencies. Thus surplices, disused there for a long time in most churches, by bad examples, carelessness and indulgence, are now beginning to be brought in fashion, not without difficulty; and in some parishes where the people have been used to receive the Communion in their seats (a custom introduced for opportunity for such as are inclined to Presbytery to receive the sacrament sitting) it is not an easy matter to bring them to the Lord's table decently upon their knees."<sup>1</sup> Green says that "the habit of receiving the Communion in a sitting posture had been common" in England, but was stopped by Laud, when he became Primate in 1633.<sup>2</sup> It is clear that this habit had been introduced into Virginia by the early Puritans; for Rev. Hugh Jones wrote before the Presbyterian immigration had made itself felt. His book was written in 1724 just after an attempt on the part of the Bishop of London to bring the Virginia Church under stricter discipline.<sup>3</sup> Surplices did not come into general use in Virginia until far into the present century and in some parishes not until within the last fifty years. The Virginia diocese has always claimed to be extremely low church and it still differs radically both in doctrine and ceremonial from most of the other dioceses of the same denomination. This conservatism, we claim, is a survival of the influence of the early Puritan settlers, enforced, no doubt, by the Huguenots, who came in later, a number of whose ministers occupied Episcopal parishes.

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<sup>1</sup> *Present State of Virginia*, 69.

<sup>2</sup> Green, *History of the English People*, III, 159.

<sup>3</sup> Bishop Perry's Collection of MSS., 257, ff.

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# IS HISTORY PAST POLITICS?<sup>1</sup>

By HERBERT B. ADAMS.

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There have been frequent criticisms of Mr. Freeman's famous definition, "History is Past Politics, and Politics are Present History." The phrase occurs in varying forms in Mr. Freeman's writings,<sup>2</sup> and was adopted as a motto for the Johns Hopkins University Studies in the year 1882, soon after the historian's visit<sup>3</sup> to Baltimore. The motto was printed not only upon the title page of our published Studies, but also upon the wall of our old Historical Seminary. Mr. Freeman kindly wrote for us an Introduction to American Institutional History and, by his long-continued correspondence, gave great encouragement to our work.

Ten years after his visit to Baltimore, Mr. Freeman contributed to *The Forum* a review of his opinions, saying at the close of his article: "It is that chance proverb of mine which the historical students of Johns Hopkins have honored me by setting up over their library, it is by the application which I have made of it both to the events of the remotest times and to the events which I have seen happen in the course of sixty-

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<sup>1</sup> A paper read in Baltimore, November 30, 1894, at the Sixth Annual Meeting of the Association of Colleges and Preparatory Schools in the Middle States and Maryland.

<sup>2</sup> For references, see Johns Hopkins University Studies, Vol. I, 12.

<sup>3</sup> For an account of this visit, see Studies, Vol. I, 5-12.

nine years, that I would fain have my life and my writings judged." These were probably the last words addressed to American readers by the historian of Sicily, who died at Alicante, in Spain, March 16, 1892, one month before the appearance of his last magazine article.

A brief review of Mr. Freeman's Philosophy of History will serve to set our chosen motto in a clear light. He regarded Greek politics as the beginning of the world's state life. For him the Achaian League of Greek cities was the historic forerunner of the Federal Union of these United States. For him the real life of ancient history lay "not in its separation from the affairs of our own time, but in its close connection with them." (Office of the Historical Professor, 41.) For him the records of Athenian archons and Roman consuls were essential parts of the same living European history as the records of Venetian doges and English kings. It mattered little to this large-hearted, broad-minded historian of Comparative Politics whether he was writing of free Hellas or free England, of Magna Graecia or the United States. He wrote political articles on the Eastern Question and the Danube provinces for the *Manchester Guardian* or *Saturday Review* in the same spirit in which he wrote historical essays.

Mr. Freeman strongly believed that the main current of human history runs through the channel of politics. In the first published course of his lectures at Oxford, 1884-85, on "Methods of Historical Study," p. 119, he maintained that history is "the science or knowledge of man in his political character." He regarded the State as the all-comprehending form of human society. He used the word "political" in a large Greek sense. For him the Politeia or the Commonwealth embraced all the highest interests of man. He did not neglect the subjects of art and literature. Indeed, he began his original historical work with a study of Wells Cathedral in his own county, and throughout his busy life he never lost interest in architectural and archæological studies. For him Roman art and the Palace of Diocletian were but illustrations

of Roman life and character. Civilized man lives and moves and has his being in civil society. Cathedrals, palaces, colleges, and universities are simply institutions within the State, owing their security and legal existence to State authority.

Mr. Freeman regarded present politics as history in the making. The struggles and conflicts of the present are the results of historic forces. When great problems are settled by war, legislation or diplomacy, the facts are accepted and are added to the great volume of human history. Freeman carried this view so far that he said: "The last recorded event in the newspapers is, indeed, part of the history of the world. It may be and it should be studied in a truly historic spirit."<sup>1</sup>

Such was the comprehensive philosophy of the great English master of history and politics. It has made a profound if not a permanent impress upon the minds of many young Americans. It has entered into their consciousness and into their studies of institutional history. The motto which we have chosen for our published monographs and for our Seminary wall is a good working theory for students engaged in the investigation of laws and institutions of government. No representative of the Johns Hopkins University, however, ever maintained that all history was past politics, but only

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<sup>1</sup> Professor Jesse Macy, in his paper read before the American Historical Association at Chicago in 1893, on the Relation of History to Politics, said: "No other original source of history can be compared in importance with present politics." (See Annual Report for 1893, p. 185.)

At the time of the American Civil War, Charles Kingsley, then professor of history at Cambridge, said: "I cannot see how I can be a Professor of past Modern History without the most careful study of the history which is enacting itself around me." Accordingly he proceeded to lecture on American History. Mr. Freeman had the same historical impulse, but he preferred to begin his treatment of Federal Government with the Achaian League. He evidently intended to include the American Union in his system of "Past Politics," for, upon his title-page, he mentioned "the Disruption of the United States" as the final limit of his work; and he always insisted that Secession was Disruption. The Union was badly broken, but it was finally mended and preserved, and is still engaged in politics.

that some history is past politics, and the kind of history that we investigate is chiefly of that order. It is not out of place to observe, with Mr. Freeman's biographer, William Hunt, that "politics are the chief determining forces in a nation's life, in that they control and direct the production and application of wealth, the habits, aspirations, and to a large extent, the religion of a people, and that they are, therefore, the foundation of all sound history." (From the Proceedings of the Somerset Archæological and Natural History Society, Vol. XXXVIII: 13.)

While politics and laws are the foundation of the upper strata of history, and while history itself is the deep and eternal substratum of politics, it is well to remember that there are some things in the world which are neither politics nor history. For example, individual and domestic life is neither historical nor political, unless in some important way it affects the common life of society.<sup>1</sup> Here lies the true distinction between biography and history. Froude and Carlyle were champions of the biographical idea in history-writing. In his Inaugural Address at Oxford, Froude said that the function of the historian is to discover and make visible illustrious men and pay them ungrudging honor. He strongly approved of Carlyle's saying: "The history of mankind is the history

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<sup>1</sup> Paul Lindau, in the *Public Ledger* (Philadelphia), November 28, 1894, calls attention to the interesting sociological fact that the Bismarckian household exhibited a type of patriarchal family life, curiously surviving in this nineteenth century. In this case domestic life becomes of historic interest. The influence of the late Princess Bismarck was indirectly and unconsciously political because of her relation to the Iron Chancellor in the days of his activity. Lindau says, "She warmed the home with the sunny simplicity of her nature, and when storms were raging wildly without, she afforded her wearied and sorely tried husband a comfortable corner wherein to forget the excitements and trouble of the day and to take innocent pleasure in life amid the home circle, and to collect his strength for renewed efforts. In this way the Princess played indirectly a part in politics that was not unimportant, although she never sought to make her strong personal influence felt in political questions."



of its great men ; to find out these, clean the dirt from them, and place them on their proper pedestals, is the true function of the historian." Carlyle thought history the essence of innumerable biographies, but it may be urged that all biographies since the world began would not constitute history, unless they recognize the all-uniting element of civil society and of the common life of men in connection with human institutions. No biography is of the least historical importance unless it treats man in his social or civic relations. This Greek idea of man as a political being, of man existing in an organized community or commonwealth, is absolutely essential to a proper conception of history. Indeed, we may go further and say with Goldwin Smith : "There can be no philosophy of history until we realize the unity of the human race and that history must be studied as a whole." (Lecture on History, p. 46.) This is very different from Froude's doctrines that "what is true of a part is true of the whole" and that "History is the record of individual action," both of which statements are manifestly untrue.

Without ignoring the heroes of Froude and Carlyle, or the obscure annals of American local history, we of the Johns Hopkins University realize that the world is round and are inclined to go even further up the stream of Past Politics than did our friend and patron, Mr. Freeman. We are unwilling to begin our course of historical study with old Greece or Aryan Europe. We seek the origin of more ancient cities than Athens and Sparta. We wish to know the laws and customs of the earliest races of men. We are disposed to recognize primitive man and society as worthy of a place in the study of rudimentary institutions. The village community, the patriarchal tribe, the first communal families, are all worthy of historical attention. Indeed, we are not averse to the discovery of institutional germs, like marriage and government and economy, even in the animal world. We are accustomed to say that history begins with the stone axe and ends with the newspaper. We believe that the beginning and end of history

is man in society. As Colonel William Preston Johnston well said in his paper published by the American Historical Association (1893, p. 47): "Man is the first postulate of history. He is the beginning and the end of it. He enacts it; he tells it; he accepts it as a message or gospel for guidance and self-realization. Man, mind, phenomena, memory, narrative—and history is born." Man in the State, Man as a Social Animal, Man living and moving in institutional groups,—this historical conception, which is as old as Aristotle, we of the Johns Hopkins Historical Seminary regard as truly scientific and as practically modern. Its revival is due to the Renaissance of Greek and Roman politics in this nineteenth century.

Let us now inquire from what historical source Freeman derived his notion that "History is Past Politics." The historian of the Norman Conquest received his inspiration from Dr. Thomas Arnold, the father of modern studies in the schools and colleges of England. The Headmaster of Rugby not only revolutionized the public school life of our mother country in educational and moral ways, but he carried his Greek ideas of history into the University of Oxford, from which they have gone forth through England and America in one of those great intellectual movements so characteristic of modern university influence.

In his Inaugural Lecture at Oxford in 1884, on the Office of the Historical Professor, pp. 8–9, Mr. Freeman said: "Of Arnold I learned what history is and how it should be studied. It is with a special thrill of feeling that I remember that the chair which I hold is his chair, that I venture to hope that my work in that chair may be in some sort, at whatever distance, to go on waging a strife which he began to wage. It was from him that I learned a lesson, to set forth which, in season and out of season, I have taken as the true work of my life. It was from Arnold that I first learned the truth which ought to be the centre and life of all our historic studies, the truth of the Unity of History. If I am sent hither for any special object, it is, I hold, to proclaim that truth, but to proclaim

it, not as my own thought, but as the thought of my great master."

From Arnold, more than from any other teacher or writer, Freeman learned that history is a moral lesson. In this strong conviction Freeman, in one respect at least, stands upon common ground with Froude, who said of history: "It is a voice forever sounding across the centuries the laws of right and wrong. . . . Justice and truth alone endure and live. Injustice and falsehood may be long-lived, but doomsday comes at last to them, in French revolutions and other terrible ways." In death the two great historians of England are now united. Their ethical views of human history are essentially the same. Freeman said of the historian of Rome, one of his predecessors at Oxford: "In every page of his story, Arnold stands forth as the righteous judge, who, untaught by the more scientific historical philosophy of later days, still looked on crime as no less black because it was successful, and who could acknowledge the right even of the weak against the strong." Throughout his entire career as a publicist and as an historian, Freeman was the champion of liberty against oppression, of down-trodden Christian nationalities against the unspeakable Turk.

It was from Thomas Arnold that Freeman learned the great lesson that the history of Greece and Rome is really nearer to the modern world than are many chapters of mediæval history. In his lectures at Oxford, p. 62, Arnold had said "what is miscalled ancient history" is "the really modern history of the civilization of Greece and Rome." He maintained that the student finds, upon classic ground, "a view of our own society, only somewhat simplified," like an introductory study. (*Lectures on Modern History*, p. 220.) Arnold looked on old Greece as the springtime of the world, and upon Rome as the full political development of classical ideas of state life. The world is still moving along the imperial lines laid down in Church and State by the eternal city. Freeman regarded Rome as the source of all modern politics, the great

lake from which all streams flow. In his Inaugural Lecture at Oxford, p. 10, Freeman said: "Arnold was the man who taught that the political history of the world should be read as a single whole. . . . That what, in his own words, is 'falsely called ancient history,' is, in truth, the most truly modern, the most truly living, the most rich in practical lessons for every succeeding age."

Dr. Arnold conceived of ancient history as living on in present society. Modern history has preserved the elements of earlier civilizations and have added to them. (See *Lectures on Modern History*, 46.) For Arnold, past politics were embryonic forms which, in modern society, have reached their maturity. His idea of historical politics resembles Dr. Wm. T. Harris' idea of education, which, for every well-trained scholar, should repeat the intellectual experience of his predecessors, including the Greeks and Romans, whose culture endures in our so-called liberal arts or fair humanities. Dr. Arnold once said that he wished we could have a history of present civilization written backwards. This kind of historical knowledge would certainly be welcome to practical statesmen and contemporary sociologists.

It was undoubtedly from Arnold that Freeman derived his conception of history as past politics. Arnold was thoroughly imbued with the old Greek idea of the State as an organic unity. He defined history "not simply as the biography of a society, but as the biography of a political society or commonwealth." (*Lectures*, 28.) For him the proper subject of history is the common life of men, which finds its natural expression in government and civic order. He once said that the history of a nation's internal life is "the history of its institutions and of its laws." Under this latter term the Greeks included what we call institutions. The Republic and the Laws of Plato and Cicero represent the classical beginnings of modern political science.

Thomas Arnold, the editor of Thucydides and the historian of Rome, was largely influenced by his classical studies, but

his own historical work was determined by the views of Barthold George Niebuhr,<sup>1</sup> who may be called the real founder of the modern science of institutional history. Niebuhr laid little stress upon individual characters and individual action in Roman history, but great emphasis upon Roman laws, institutions, and public economy. He found significance in Roman farming and land tenure as well as in Roman conquest. He was one of the first among modern scholars to recognize the importance of the historic state and its constitutional development. He lived in the period following the French Revolution, before which time men had endeavored to construct history from their own imaginations and to reconstruct society upon preconceived principles or so-called philosophy. Niebuhr based his treatment of Roman history upon actual research and careful criticism. He too had a moral conception of the historian's task and endeavored to bring all the lessons of old Roman courage, fortitude, energy, perseverance, and manliness to bear upon the education and regeneration of Prussia and New Germany. The foundation of the historico-political school was laid by Niebuhr, Eichhorn, Savigny, Baron vom Stein, George Pertz, and Gervinus during the period of Germanic reconstruction in Europe after the downfall of Napoleon.

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<sup>1</sup> Arnold in a letter to Chevalier Bunsen, thus expresses his profound indebtedness to Niebuhr for pioneer labors and critical suggestions in the field of Roman history: "I need not tell you how entirely I have fed upon Niebuhr; in fact I have done little more than put his first volume into a shape more fit for general, or at least for English readers, assuming his conclusions as proved, where he was obliged to give the proof in detail. I suppose he must have shared so much of human infirmity as to have fallen sometimes into error; but I confess that I do not yet know a single point on which I have ventured to differ from him; and my respect for him so increases the more I study him, that I am likely to grow even superstitious in my veneration, and to be afraid of expressing my dissent even if I believe him to be wrong. . . . Though I deeply feel my own want of knowledge, yet I know of no one in England who can help me; so little are we on a level with you in Germany in our attention to such points." (See Stanley's *Life and Correspondence of Thomas Arnold*, p. 269.)

The whole modern school of German and English historians was influenced by the critical and institutional methods of Niebuhr. In Germany, Otfried Müller applied Niebuhr's principles to the study of Dorian tribes and Hellenic states. Boeckh turned his attention to the public economy of Athens. Curtius, the greatest living historian of old Greece, recognizes his debt to Niebuhr. Ranke, the greatest of all historians, whether ancient or modern, spoke thus warmly of Niebuhr's example: "The greatest influence upon my historical studies was exerted by Niebuhr's Roman history. It afforded a powerful stimulus in my own investigations in ancient history, and it was the first German historical work which produced a profound impression upon me." ("Aus Leopold von Ranke's *Lebenserinnerungen*," *Deutsche Rundschau*, April, 1887, p. 60.) Ranke extended to modern and universal history the principles of historical criticism which he had learned from Niebuhr's Rome.

The subject of Ranke's Inaugural Lecture at the University of Berlin in 1836 was "The Relation and the Difference between History and Politics." He clearly recognized that the continuity of history appears pre-eminently in States. One generation of men succeeds another, but States and institutions live. He cited the example of Venice, whose State life endured uninterruptedly from the decline of the Roman empire to the time of Napoleon. He recognized that nothing historic really perishes from the earth. Old institutions are merged into higher and more perfect forms. A new life appears, with a new series of historical phenomena. He too saw the intimate relations between past politics and present history. He said: "A knowledge of the past is imperfect without a knowledge of the present. We cannot understand the present without a knowledge of earlier times. The past and the present join hands. Neither can exist or be perfect without the other." (Ranke: *Abhandlungen und Versuche*, p. 289.)

Ranke believed in the unity and the universality of history as strongly as did Freeman himself. "History is in its very

nature universal," said Ranke. His friends say that he never wrote anything but universal history. He treated individual countries, Germany, France, and England, not as isolated nations, but as illustrations of world-historic ideas of religion, freedom, law, and government, expressed or realized by individual European States. For Ranke as for Abelard, that master mind of the Middle Ages, the universal could be discerned in the particular. Even local<sup>1</sup> history may be treated as a part of general history. Ranke's first book, on the History of Latin and Teutonic Peoples, was really a contribution to universal history. The last work of his life, on "*Weltgeschichte*," was begun at the age of ninety, and was but a natural supplement and philosophical rounding-out of all that he had done before. There is, therefore, a perfect unity between the beginning and end of his life-long task.

Ranke saw in history the resurrection and the immortality of the past. He regarded it as the historian's duty to revive and reconstruct past ages or past events from apparently dead records. In this pious labor he found the greatest joy. He once said: "He needs no pity who busies himself with these apparently dry studies, and renounces for their sake the pleasure of many joyful days. These are dead papers, it is true; but they are memorials of a life which slowly rises again before the mind's eye." Ranke is the best type of the truly scientific historian, for his principle was to tell things exactly as they occurred. He held strictly to the facts in the case. He did not attempt to preach a sermon, or point a moral, or adorn a tale, but simply to tell the truth as he understood it. He did not believe it the historian's duty to point out divine providence in human history, as Chevalier Bunsen endeavored to do; still less did Ranke proclaim with Schiller that the history of the world is the last judgment, "*Die Weltgeschichte ist das Weltgericht*." Without presuming to be a moral cen-

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<sup>1</sup> A good illustration of this fact may be seen in Howell's study of Lexington in his "Three Villages."

sor, Ranke endeavored to bring historic truth in all its purity before the eyes of the world and to avoid such false coloring as Sir Walter Scott and writers of the romantic school had given to the past.

The conception of history as politics survives in Germany as it does, and will do, in England and America. William Maurenbrecher, in his Inaugural Address on History and Politics at the University of Leipzig in 1884, maintained that history relates more especially to politics, to men and peoples in civic life. While recognizing that there are other fields of historical inquiry beside the State, such as religion and the church, art and science, he urged that history proper is political history, which he calls the very flower of historical study. Without law and order and good government, there can be no art or science or culture within a given commonwealth. All the finer forces of society live and move within the limits of civil society. The bands which unite history and politics cannot be broken. History reaches its goal in politics and politics are always the resultant of history. The two subjects are related like our own past and present. The living man preserves in memory and his own constitution all that has gone before. No tendency in politics can be called good which does not take into account the historical development of a given people. Whoever will understand the political situation of any State must study its past history.

These are the views of one of the best modern academic leaders of German youth, of a man now dead, but his spirit lives in his pupils. Gustav Droysen is also dead, but his principles of historical science, translated into English by President Andrews, of Brown University, have become a *Vade Mecum* of American teachers. Droysen has perhaps the highest of all conceptions of history, for he calls it the self-consciousness of humanity, the Know Thyself of the living, advancing age. But he too recognizes that History is Past Politics, for he says, "What is Politics to-day becomes History to-morrow."



Niebuhr's ideas of political history were transmitted to England through Arnold, Freeman, Goldwin Smith, and J. R. Seeley,<sup>1</sup> all of whom hold to the view that History is Past Politics. Niebuhr's ideas of institutional history were eagerly caught up by that enthusiastic lover of liberty, Francis Lieber, who, returning penniless from his private expedition to Greece in the time of her Revolution, lived for a time as a tutor in Niebuhr's family at Rome. By Niebuhr's advice he emigrated from reactionary Prussia, first to England and then to America. The ripened fruit of Niebuhr's teaching may be seen in Lieber's writings on Civil Liberty and Political Ethics. Lieber's ideas of liberty were widely removed from the fantastic, philosophical dreams of the eighteenth century, and are based upon an historical study of English self-government. For him civil liberty meant institutional liberty.

Francis Lieber represents the first beginnings of the historico-political school in American colleges and universities, where he always maintained that history and politics belong together. In South Carolina College he taught both of these subjects, together with Say's Political Economy. In his plan for the reorganization of Columbia College in New York City, he recommended the intimate association of historical, political, and economic subjects. When he was called to Columbia College from Columbia, South Carolina, in 1857, the following branches of the tree of knowledge were assigned to the new professor: Modern History, Political Science, Interna-

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<sup>1</sup> Professor J. R. Seeley, in his "Expansion of England," pp. 1, 166, thus states his practical and political views of history:

"It is a favorite maxim of mine, that history, while it should be scientific in its method, should pursue a practical object. That is, it should not only gratify the reader's curiosity, but modify his view of the present and his forecast of the future.

"Politics and History are only different aspects of the same study. . . . Politics are vulgar when they are not liberalised by history; and history fades into mere literature when it loses sight of its relation to practical politics."

tional Law, Civil Law, and Common Law. This was about as comprehensive a scheme of instruction as that projected in the University of Michigan in 1817, when a Scotch Presbyterian Minister, John Monteith, was given six professorships, in addition to the presidency, and when Gabriel Richard, the Roman Catholic Bishop of Michigan Territory, was allowed the six remaining chairs in the faculty! But Francis Lieber was right in his large conception of a new school of History, Politics and Law as a desirable unit in academic administration. Modern Columbia, under the influence first of Professor John W. Burgess, and now of President Low, has discovered the ways and means of developing a great School of Political Science, in which Economics, History, and Sociology find their proper place, all in perfect harmony with the interests of a special faculty of Law.

In the reorganization of the departments of History, Politics and Economics at Cornell, Harvard, Michigan, and Wisconsin Universities, these subjects have been intimately associated. At the Johns Hopkins University, from the beginning in 1876, they have never been divided. They are still harmoniously grouped together, both on the graduate and undergraduate sides of instruction, for greater educational efficiency and for department unity. History, politics and economics,—these, together with historical jurisprudence, form the chief elements of our system of graduate study in the three years' course for the degree of Doctor of Philosophy. We shall doubtless retain our motto, "History is Past Politics and Politics are Present History," as a convenient symbol of the essential unity of all political and historical science, and as a pleasant souvenir of Mr. Freeman.

In the attempts of college and university men to deal with present problems of political, social, and educational science, we must all stand together upon the firm ground of historical experience. Mere theories and speculations are unprofitable, whether in the domain of pedagogics, sociology, finance, or governmental reform. In the improvement of the existing

social order, what the world needs is historical enlightenment and political and social progress along existing institutional lines. We must preserve the continuity of our past life in the State, which will doubtless grow like knowledge from more to more.

Frederic Harrison, in an essay maintaining that "The Present is ruled by the Past," well says: "The first want of our time is the spread amongst the intelligent body of our people of solid materials to form political and social opinion. To stimulate an interest in history seems to me the only means of giving a fresh meaning to popular education, and a higher intelligence to popular opinion." He asks us what is this unseen power, this everlasting force, which controls society? "It is the past. It is the accumulated wills and works of all mankind around us and before us. It is civilization. It is the power which to understand is strength, to repudiate which is weakness. Let us not think that there can be any real progress made which is not based on a sound knowledge of the living institutions and the active wants of mankind. . . . Nothing but a thorough knowledge of the social system, based upon a regular study of its growth, can give us the power we require to affect it. For this end we need one thing above all—we need history, hence its pre-eminent worth in social education."



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